

shoe. He carried the Caressa in the spring of 1959 through the fall of 1959, and the spring of 1960. He carries just a few little stray pairs today. He is not buying any.

Home and Abroad is the same type, about the same category as the Caressa. He tried those, feeling he needed another line of shoes in this type and price range when he wasn't successful with Caressa and they went to \$16.95. He tried this other brand as a replacement for Caressa for two seasons, and then have dropped them because he hasn't been successful with them. The witness mentioned the Jolene and Orchid. They are both brand names of Tober Saifer Shoe Company. Those that he buys are flats and sport shoes, women's sport shoes. Their price range is \$4.99 to \$8.99. He carries quite a few of those. He has been handling them in this store for three years.

The witness relies on the sale of his Brown shoes for his store's operation. Most of the lines he has been discussing were complimentary lines, the feeling that he needed some other types. Those that were not successful were dropped for that reason. The last two brands, the Jolene and the Orchid, he continues to carry because they are successful in the store and they would not be considered complimentary lines because his flat and sport shoe stock for teens and women will consist 75 to 80 percent of those two brands.

Fort Smith back in 1947 and 1948 was about 50,000 or 55,000. The witness mentioned Edwin Clapp. It is a high priced man's shoe. When he was in Fort Smith he quoted 2 years—they were there 5 years 1947-1952. At that time Edwin Clapps were in approximately the \$20 to \$25 range. They sell for \$30 to \$35 today.

At that time Florsheim were from \$16 to \$20. Today they run from \$20 to \$30. At that time they were certainly a high-priced shoe. The Ross shoe is a very inexpensive man's shoe. He doesn't know that they still exist. It was a division of the old J. W. Carter Shoe Company in Nashville.

The witness also mentioned the Portage brand at the Fort Smith store. They were competitive in price and type largely to Roblee. They carried both. They had Freeman and Roblee in that price range, and then when they had trouble with Freeman, they dropped the Freeman

line and bought some Portage shoes to give them that other line in the same price field. They carried quite a few Portage shoes at that time in Fort Smith.

During the years between 1952 and 1957, prior to entering into his present store, the witness was entirely away from the shoe business. Then he went back into the shoe business in this partnership that he mentioned just previous to coming to Sherman, one at Vinita, Oklahoma. The one in which he bought Deb Shoes. He was in that 2½ years, 1955-1957. He went directly from that partnership into the Sherman store.

When he went into his present store Brown Shoe Company did not loan him any money. He did not remodel the store when he went into the Sherman store. It was a Brown franchise and was 8 years old. He hasn't done any major remodeling. There was no Brown neon signs at his store. He has a large sign which has his name in large type and then there is a small—he has three of their brand names on that sign. But it was put there by his predecessor and he didn't change it. He left those and put his name about it. He has three sales people in his store in addition to himself.

One Brown shoe salesman for each of the Brown lines visits his store. They have other lines that are competitive to their brands who don't call on the witness. The frequency of their visits varies a great deal, sometimes as few as 4 times, and it may be as many as 8 depending on how close they live and how often they go through. There is one who lives in Oklahoma, for example, he is further away and the witness will see him not over 4 times [fol. 443] a year. There were others that are driving through and they stop and visit for a few minutes. It's hard to say how many times he sees them. He sees one field man from Brown each year. The frequency will vary. Sometimes he'll go a year without seeing him. As far as any transactions of any business or anything like that, never more than twice a year. He might come through and stop off, like a salesman, have a cup of coffee and visit a few minutes, but as far as any business transactions, twice a year would be the most.

He uses the Brown accounting system. His fire insurance, is carried with Capon, in St. Louis, and has been

handled through Brown. It is billed to him, not through Brown, by the firm itself. That is the public liability and fire insurance, theft and tornado. The witness and the young man who is associated with him up here have the group life insurance with Prudential. That is billed by and paid direct to Prudential, but it is through a Brown franchise arrangement. He hasn't compared the cost of these various types of insurance with the cost of other companies. He believes that it is cheaper than other companies.

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Q. Now you stated, sir, that back in July of 1957, you did sign an agreement with Brown Shoe Company, franchise agreement?

A. Yes, sir.

Q. What was your understanding of that, of your obligations under that agreement, sir?

A. Well, I can't offhand say just exactly what the agreement—how the agreement is worded. I thought the gist of it, and I had—we never referred to it.

[fol. 444] Q. Well, you just mentioned you knew the gist of it. What is the gist of that agreement, what is your understanding of the gist of that agreement?

A. Well, Brown Shoe Company agrees to furnish us certain things such as the accounting system that you suggested there. We are supposed to have the advice and services of the fieldman, if that helps, and we in turn are supposed to buy—now, I say, "We are supposed to," what I mean is according to this agreement that we buy merchandise in the price field and the type from Brown—not exclusively, but—well, all I can say, everything being equal.

Q. But primarily from Brown?

A. Yes.

Q. Is that correct, sir?

A. Yes.

Redirect examination.

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The sign in front of his store, Coleman's Shoes is his own sign. It was the sign that was there at the store and

he bought the leasehold improvements which that would come under, and he had the name changed. He paid for that.

He mentioned dropping lines not being successful. He has done that from time to time. He has never dropped a Brown line for that reason. He has cut one or two divisions some, to such a low volume that it might be negligible, but he hasn't just actually eliminated the line or dropped it. As to whether the witness would feel free to do that if business conditions warranted it, he said, I would drop them.

[fol. 445] GLEN HENRY COOPER, called as a witness for the Respondent, testified as follows:

Direct examination.

He lives in Corsicana, Texas and he owns a retail shoe store, called Cooper & Spurlock. The population of Corsicana is approximately 22,000, and he estimates the population in his trade area would run between 45,000 and 50,000. He acquired his shoe store by buying out his partner in October of last year. He and his partner had purchased it together in 1953. It was an existing store at that time owned by Hill & Shipe.

The witness' experience in shoe retailing started at the high school age when he was working as an extra salesman on the floor for Hill & Shipe, and he has been in the shoe business since that time with the exception of about two years during the war. That works out to be approximately 28 years. His early experience was in the same Hill & Shipe shoe store in Corsicana that he referred to.

As to the brands of shoes he presently carries in the store, he has from Brown Shoe Company, Naturalizer, Life Stride, Roblee, Pedwin and Buster Brown, and some outside lines, including Hush Puppies, some Viner loafers, and a few sport shoes from Zebheo Moccasin Company. He also carries Wide West houseshoes, and some U. S. Rubber goods. In addition he carries Dr. Scholl's arch support shoes, the sandal type shoes. They are principally ladies' shoes.

He does not have a written franchise agreement.

The canvas and rubber footwear which he buys from the U. S. Rubber Company, he purchases directly from the salesman that calls, who works out of the Dallas area. He is billed through the Brown Shoe Company on these goods. He does not get any better price on that footwear as a Brown franchise dealer than if he were not. He has discussed that with the U. S. Rubber Company salesman and he does not get a better price on it.

[fol. 446] The term "line concentration" to him means more profits at the end of the year, and concentrating on fewer lines which proves to be just a lot more profitable in the stores. This is because you concentrate on fewer lines and you can buy shoes and fit more people as they come into your store because you are concentrated instead of spreading your inventory over a bunch of different lines—you can just do a much better job of merchandising. As to whether a line such as Hush Puppies conflicts with any shoe carried by, or available from Brown Shoe Company, the witness said that he frankly believed Hush Puppies were an individual line. It possibly takes away some sport shoe business that he would otherwise buy from Brown. He does buy some Brown shoes similar to Hush Puppies.

Brown Shoe Company has never told him that he could not carry an outsider conflicting line of shoes. No one from Brown has ever asked him to stop carrying outside or conflicting lines of shoes. No one from Brown has ever told him that he must carry any certain Brown line or any lines of shoes.

The witness is a Brown franchise dealer. The store, Hill & Shipe, when they opened it in 1946, was a franchise store at that time, and it has been on the franchise plan ever since.

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[fol. 447] He has never carried any lines from the Juvenile Shoe Company. They are carried in the town, but he has never carried them. His competitor, Big Four Shoe Store, right up the street carries them. In his size town the fact that a branded line of shoes is carried elsewhere in the town has a very definite effect on his own

decision as to whether or not to buy the shoes. Usually in the town the size that he is doing business in, one branded line is sufficient. There are so many other lines, which would not be conflicting and that would be just as good, and therefore he wouldn't necessarily want the same brand that his competitor was carrying.

He has carried Deb shoes. They were carried at the time Hill & Shipe owned the store, in about 1948 to 1950. [fol. 448] He was manager of the store at the time. At the time the store was opened, Mr. Hill had bought the shoes in one of the other stores, and they were a very good line of shoes and they bought them at that store too. The store was opened in 1946, the first Debs were probably in 1948. They were carried in the store from about 1948 to 1951. The store was a franchise store during that period. As to the reason for ceasing to carry Debs, the witness said, when Debs came out, they were in a line by themselves. They came out with some nice low-heeled shoes, pretty colors, and they fit good and it proved to be a very profitable line. But when one company in the shoe business comes out with a new model it isn't long until other companies have something just as good and a lot of times the salesman will even buy a couple of pair and mail into his company. It is worked that way all over the country in the shoe business. The sales began to fall off some, and they dropped the line, and one of the main reasons was that they were sold by a competitor up the street, while the witness carried them. Neither Brown nor anyone from Brown ever told him that they could not carry Deb shoes. He has never purchased shoes from the Freeman Shoe Company. They are carried in town at the Big Four Shoe Store. He has never purchased any Weyenberg Shoes because he is just not familiar with them. He cannot recall whether their salesman ever called on him and he was unable to say whether they were in town.

He does not recall ever having been called upon by a salesman from the Huth-James Shoe Company. He is not familiar with the line of shoes. He has never been called on by a salesman from Leverenz Shoe Company, and he is not familiar with that line.

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[fol. 449] The witness obtained a loan from the Brown Shoe Company, as a partnership, Cooper & Spurlock. He believes it was made in 1953. He also has an individual loan at the present time. The prior loan has been paid off. The existing loan is for \$16,000. As to his obligation in connection with that loan, it is just a simple 4 year loan. He has a schedule of payments, five and a half percent interest. Brown has never tried to tie in that loan with the purchase of its shoes in any way whatsoever. Nor have they tied it or attempted to tie it in with the nonpurchase of outside lines. There are no strings attached to the loan in any way of purchases of any kind.

Cross-examination.

Hush Puppies do not conflict with any line the witness carries from Brown Shoe Company. The Viner loafer which he carries do conflict with Brown lines. The witness said there is a conflict there, but they are not obligated to buy Brown Shoe Company shoes. If they think some other company has a better product, maybe in one special shoe or pattern, they go ahead and buy it. It is the Robin Hood line of Brown Shoe Company which conflicts with the Viner loafers. He does not carry all the patterns offered by Viner. He just carries the penny loafer. Last year he sold approximately 300 pairs of those shoes. His overall pairage in the store was a little over 12,000 pairs.

The witness could not say whether Hill & Shipe signed a Brown franchise agreement when they went on the Brown franchise plan because he was just the manager and wouldn't know for sure. He was the manager when they opened the store in 1946 in Corsicana.

As to his conception of the obligation that they owed Brown Shoe Company for services and benefits they receive under the Brown franchise plan, the witness said it is just a good plan—good basic ideas. They find in reading different articles that the percentage of failures are far smaller where you have a set plan to follow like [fol. 450] that. As to what they had to do to receive these services and benefits, he said, he automatically buys their shoes and automatically they get better service. There isn't any written agreement of any kind. Where they have

the shoes, all these different merchandising aids are available to you at no extra cost.

The Clinic line of Juvenile Shoe Company is carried by the Big Four Store in Corsicana, Texas. That is a Famous Shoe Store. It is three doors up the street from his store. That store has at least four regular salesmen.

When the witness was buying Debs back in 1948 to 1950 they also sold to a competitor up the street, the Big Four Shoe Store. The reason he bought the Debs was that they came out with new different styles. At that time they were a style leader.

The individual loan which he got from Brown Shoe Company was in the year 1960. The loan to the partnership to which he belonged was for \$13,900. He believes the interest rates on that loan were the same as the loan that he has now. Interest rates have been advanced some and it is possible that it could have been five or five and a half on it. The loan was for 4 years and it was paid as agreed. It would have been in 1957 that it was terminated.

Getting back to the Deb Shoe Company, Brown came out with styles similar to those carried by Deb when he was buying them. It was within a year's time.

He has used the window trim service offered by the Brown franchise. At the present time he is not using it. They had it for a couple of years during their partnership. A lot of times they would use it for a year and then maybe drop it for a year, and then come back a year with it. A lot of times they can build the displays over and they will be just as effective. He used the architectural services of Brown when he remodeled the store last fall. The cost of the remodeling was approximately \$5,000. The way he went into it he did not bother with all the new plans. He didn't know what it would have cost him [fol. 451] if he had gotten the architectural services from another source. He wouldn't think it would make a lot of difference. The cost of that remodeling was not paid out of the money that he got in the loan from Brown. It was paid out of the profits of the store. He paid half of it and the landlord paid half of it.

The witness has a large neon sign outside of his store. It has Roblee Shoes on it. He got the sign from Brown

Shoe Company. He paid for having it installed and he paid the freight on it, and he got the sign free. He estimated to get that sign from another source would cost a couple of hundred dollars, maybe two fifty. He has no other signs in the store at the present time which were given him by Brown. He does get paper signs all the time, just like all companies send them. As to other neon signs, at times he had Evans houseshoes. But through the Brown franchise plan he has only one small Robin Hood sign the salesman gave to him 3 or 4 years ago.

He uses the accounting service offered by the Brown franchise program, also the inventory assistance of field men, and he does take insurance, life, fire and public liability, theft, through the Brown franchise program. As to whether it is cheaper to carry insurance through that method than it would be from other sources, the witness said, that he has had local men in town tell him that they could meet the price on it now. But they couldn't better it.

Brown salesmen from each of the lines that he carries visit him. All of them will make at least two trips a year, some of them will make four trips a year. The Brown field man visits him too. He is in the store at least twice a year, sometimes more often.

Redirect examination.

As to what determines the brand of shoes that he carries and how he decides to buy them, the witness said, you usually have in your store what you think is the most profitable lines and again you can buy any outside branded line that you want to. He makes an analysis of his experience, profitwise, with his lines. It has a lot of effect. He said, we have had outside lines in the store, quite a number of times, and we find that year in and year out for quality, fit and value that we just can't beat the branded Brown lines that we carry in the store. He would certainly drop a Brown line if it didn't perform satisfactory. He wouldn't have a bit of hesitation about that. There are no strings attached whatsoever with regard to his ability to leave the Brown franchise program. He is free to leave at will.

The earlier loan that he and his partner received from Brown was not tied in with the purchase of Brown shoes

in any way. Nor was it tied in any way with the non-purchase of other brands of shoes.

Referring to the Deb Shoe Company again, when it came out with the novel styling, other shoe companies than Brown also copied their styles. After they were out 6 months, every company had copies. This happens in the shoe industry. If I. Miller has a real hot line in an expensive shoe, you're liable to see it next season down in the \$6.98 bracket, where their shoe originally sold for \$25.

With regard to the window trim service, the witness used from time to time, there was a charge for that. He doesn't remember what the charges are on it.

He does not think that the Roblee sign that he carried was related in any way to the fact that he was a franchise dealer. They were doing a pretty good business in men's shoes, and it would help to pull in extra traffic since Roblee today is a nationally advertised line of shoes. They see them in Life and your ladies' magazines. It is left up to the salesman, maybe he will have an account that isn't a Brown franchise store. If the line is proving profitable and building, it wouldn't be unusual to put it in the store outside of a franchise store. The Brown field men did not have anything to do with his getting the sign. Other neon signs are available from other manufacturers. For example, he has had small neon signs from Night Aire, houseshoes, and they used to have Selby Arch Pre-[fol. 453] servers in the store and they had neon signs from them, and he believes at one time he was carrying Nettleton loafers for ladies and he had a small sign from them. He also knows of other cases, even though he hasn't carried such signs in his store. It is a common practice of shoe companies to put these neon signs out to their outlets.

Recross-examination.

The purpose of the \$16,000 loan from Brown Shoe Company was to buy out his partner and pay him off. The check went to his partner for half of the store.

GLENN L. EDWARDS, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness resides in Paris, Texas. He is in the retail shoe business there. He has owned the Famous Shoe Store there since 1936. He is active in the management of it. He also owns another shoe store at the present time. He bought Olmstead's Shoe Store at Tyler, Texas, February 6th of this year. The Famous Shoe Store in Paris is on the Brown franchise program. It became affiliated with the program when he bought it. He did not enter into any agreement with Brown Shoe Company with respect to that store. He continued the name of the store he bought in Tyler as Olmstead's. He did not enter into any written agreement with Brown when he acquired that store.

The various lines of shoes carried in the Paris, Texas, store include, in the Brown line, Naturalizers, Life Strides, Smartaire, Robin Hood, Buster Brown, Roblee and Pedwin. In other lines he has men's Florsheims and ladies' Dickersons Daniel Greens, Dr. Carpenter children's shoes, Child Life children's shoes, Red Wing work shoes, Wolverine Hush Puppies, Justin boots, Acme boots and Donn-McCarthy, which has two lines, Enna Jetticks and one lesser price line, Heel Huggers. He also has Nunn-Bush shoes.

[fol. 454] In his Tyler, Texas, store he has Tober-Saifer, Deb-Towners, Nunn-Bush and Revelations. He purchased Robin Hood last night. He also has Buster Brown, Roblee, Pedwin, Air Step and Life Stride. He has Enna Jetticks in that store, and, of course, Italian sandals in both stores. In Tyler they are the Lujano brand and part of them is another brand that Tober-Saifer sells. Also in the Tyler store he has Acme boots, Red Wing bootshoes and Justin Oil-sealed boots.

As to who or what determines the shoes that he carries in the Paris or Tyler stores, he said the main thing is merchandise that will make a profit. Sometimes he buys it and doesn't make a profit, but that applies to all lines. If a shoe he buys does not make a profit it is just closed out. What determines that—when you come to the end

of the season you have a lot more of one particular line that you haven't been able to merchandise, and there are many pairs of this line left that haven't been selling, why they just quit handling it. He would feel free to do that with any Brown line he is carrying if he is not making money on it.

The witness was with Bowman Brothers in Illinois until 1928, and in 1928 he opened his own store at Denton, Texas. He was there for five years. That store was operated by him with his partner on the Brown franchise program. The Illinois store was a brand new store, one of the first ones put in in Illinois in 1925, which was a Bowman's franchise store, one of the first stores they had.

Brown has never told him that he could not carry an outside line. Brown has never asked him to stop carrying an outside line of shoes and Brown has never told him that he must carry any certain Brown line of shoes.

The witness had forgotten to mention that he carried Mishawaka rubber goods, which is Red Ball Jets, out of Mishawaka, Indiana. That is a branch of U. S. Rubber Company or something of the same type. He also carries some Autry rubber goods out of Dallas, Texas. He also has some Hood rubbers in his Tyler store and has rebought them this spring. No one from Brown had urged him to carry any U. S. Rubber products. He carried U. S. [fol. 455] Rubber products from the origination of his first selling up until about three years ago. He discontinued U. S. Rubber Company because they sold the merchandise at a cut-price proposition to competitors and he could not make any money out of it, so he quit it, as much as he loved the Company and loved the product. One of the best products ever made, but he couldn't make any money. He is discontinuing what is in the Tyler store for the same reason.

As to whether he made any price comparison between the cost of U. S. Rubber versus the Mishawaka production, the witness stated that they were all in the same price. In fact, his understanding is that the same corporation owns both of them, but he might be wrong. He buys those directly from Mishawaka.

The "term line concentration" means to the witness, if you concentrate on certain lines, lots of times the lesser

lines, the fewer lines you have, you can concentrate on them, it is going to be more profitable. It keeps him from overloading his stock, buying too much. If he overbuys he loses money, and he is in the shoe business to make money. If you overbuy you just have to get your money out the best way you can. This refers to mark-downs.

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[fol. 456] He has used the window trim service connected with Brown franchise program. He has been using it about [fol. 457] eight years. He dropped out one or two years. He pays for that service.

He participates in the group life insurance program under the Brown franchise plan and has since 1933. He also carries the casualty insurance, the liability policy, in St. Louis, but not the group fire insurance. He carries other insurance locally. He used to carry the group business insurance until 1947, but the insurance he carries now locally is less costly than what he was carrying at that time. It is substantially the same insurance. There isn't too much difference.

The witness had a loan from Brown Shoe Company in 1947, when he opened a store in Abilene. The loan was just so much a month to be paid off over a period of time. There was no tie-in or requirement in connection with that loan regarding the purchase of Brown shoes. He also received a loan in February in connection with the Tyler shoe store. He used the funds from that loan to help him finance the purchase of the Tyler store. That loan is payable over a period of time according to a schedule of payments. There is no tie-in in connection with that loan that would require him to purchase any Brown shoes.

In connection with his participation in the Brown franchise program there is no obligation on his part to buy Brown brand shoes. He is not tied to the Brown franchise program for any period of time. He could quit at any period of time at his own desire.

The witness has never carried any Juvenile Shoe Corporation shoes. He has had a salesman from Juvenile call on him in connection with his recent shoe store operations in Tyler and Paris, but the salesmen just came by to see him. They didn't come by to sell him the shoes because

competitors already have them. This has happened in Paris and Tyler both. Even though there is a competitor in the same town of the size his store is located in, it would not affect his decision as to whether or not he would stock the brand. If he had a chance to put in Lazy Bones or Clinics he would buy them today, but the Juvenile Shoe Company hasn't tried to sell them to him.

[fol. 458] He has bought shoes from the Deb Shoe Corporation for the Paris store. In fact, he had them in two of his stores. He had a store in Sulphur Springs up to two years ago which he has now sold and he had Debs in both of those stores, Paris and Sulphur Springs. The Sulphur Springs store was on the Brown franchise program. He had the Deb shoes 4½ years or nine seasons, but he does not buy them anymore because he got burned on them. He bought them four years, eight seasons straight, and it was a wonderful, profitable item, but they started taking the guts out of the shoes. When he ended up and got ready for his sale, he woke up to the fact that all he had left was Deb shoes and he just quit them cold. No one from Brown Shoe told him to quit Deb shoes. It was his own business decision. He hated the idea of quitting them because he had built up a business on those shoes.

The profitable performance of a shoe determines whether he carries it or not. If it doesn't perform profitably, you don't carry it. That is the reason he discontinued Deb.

He has never carried any Freeman shoes other than just special order. The Freeman salesman comes in to see him all the time, but it is just a friendship basis and to buy a cup of coffee. The witness has never wanted Freeman shoes. The salesman has an account in town now. The witness has other good lines that he is making money out of and he has never wanted them.

He special orders a few pairs of Weyenberg shoes. The salesman comes by to sell him Weyenberg shoes but he never buys them because he just doesn't sell a lot of work shoes. He never did buy their dress shoes except for Westinghouse Manufacturers whose representatives use those shoes for some kind of uniform wear, protective wear. They have a dress shoe with a safety toe, a special type of work shoe. This is in his Paris store.

Back about 25 years ago he carried some shoes manufactured by Huth-James. It has been over 20 years ago since he has seen a Huth-James salesman, but he used to carry the shoes. That would be prior to World War II. Since that time he has never carried any Huth-James [fol. 459] shoes and a Huth shoe salesman has not called on him. He has not carried any shoes of the Leverenz Shoe Company. A salesman has never called on him from that company.

The occasion for his making a special order for shoes is when he has a customer who wants it.

Cross-examination.

The witness took over the Olmstead shoe store February 6, 1961. It was a Brown franchise store prior to that. And he took over his Famous Shoe Store in Paris in January, 1936.

The Dickerson ladies' shoe in the Paris store is a conservative type shoe that is not high-style. It is a good middle-of-the-road shoe. It is actually a corrective shoe, a health shoe. They do make some dressier shoes which he carries a pattern or two of. His price range is \$20.95 and \$21.95. He carries too many of those shoes, an average stock of about 200 pairs.

Dr. Carpenter's children's shoes are advertised as self-starters. It is a good children's shoe, not a corrective shoe. They run from \$3.49 in the infant's size to \$6.99 in the larger size. That is for both boys and girls. Children that age wear both the same. He carries somewhere around 140 pairs of them. That shoe was in the store when he bought it in 1936. All of the doctors, pediatricians were very much in favor of this shoe because of the noncorrectiveness and the light weightedness of it, fitting of it, and he has carried it ever since, with a profitable operation. He had a waiting trade for it, so to speak, and it has kept that way for 20 some years.

Dickerson shoes were not in the store when he purchased it. At that time, there was another line, ladies' Health Spot shoes, which was taken away from the witness by a man from whom he had purchased the store. In June, 1938, the witness bought the Dickerson line to replace this

line that already had a developed trade, and it has been a profitable line all of these years.

[fol. 460] Child Life is a separate line from Dr. Carpenter. It is a corrective children's shoe. They make all kinds of shoes, but the only one he has had that have been profitable are the ones with the corrective feature.

Donn-McCarthy are manufacturers of ladies' Enna Jettick shoes. The line he carries in that is a basic corrective type shoe, conservative type shoe, in the same category as the Dickerson Arch Rock shoe, only in a lesser price range. The Enna Jetticks are from \$10.95 to \$12.95. He sold approximately 342 pairs of those shoes last year, because he had a 2.6 or 2.7 turnover in that particular shoe. He had 168 peak inventory.

The Heel Hugger is made by the same people. That is in the same thing, he is giving the figures together. One is the lower price and the Enna Jettick ladies is the higher priced. The other is actually \$9.95 and \$10.95. It is a health shoe. At the Paris store last year, he sold 13,000 or 14,000 pair of shoes.

In reference to the Tyler store, the witness had mentioned Tober-Saifer. In Tyler he did have 542 pairs of Tober-Saifer shoes. In the Tober-Saifer line, the witness carries the Deb-Towner flats which is the higher grade flat. They sell for \$8.99. The next grade of flats below those are just marked Tober-Saifer. The other group he has in that 542 pair is their brand name of Italian sandals. The entire line originally in the store when he bought it not unpacked was 542 pairs. He has been selling those. There is a particular market or appeal of having "Made in Italy" appear on the shoe box.

He has been in the store only since February 6. During that time sales have been good. He would say that they have sold about 4000 pairs of shoes since he has been in the store. Of course, he has had a change of ownership sale there and a lot of that was sold at non-profit, but still he has shown some good profit. The Nunn-Bush shoes were there when he took over the store. The price range in Nunn-Bush is \$21.95 to \$24.95. Right now he has somewhere in the neighborhood of 150 pair of those, and he has others bought for the fall season. Now there are about 6,200 to 6,500 pair of shoes in inventory at the Tyler

[fol. 461] store. As for the Paris store, his typical current inventory there is about 9,600 pair. Too many.

As to his understanding of the Brown franchise agreement, the witness said, actually there isn't any agreement. By having the franchise, you know, you are not protected on those lines because they will sell some other stores in the same town the lines of shoes too. But the main thing of his carrying those particular lines is because he makes money out of them. One major advantage is having the name franchise attached to your store operation, and that he gets free bookkeeping records. If it cost him money, he probably would have them printed locally because he probably could get them cheaper than he could otherwise.

Hearing Examiner Creel: I think his question is though, is what your understanding is of what Brown expects you to do in return for these things they do for you. Isn't that right?

Mr. Kaplan: Yes, sir.

The Witness: Well, probably the thing to do would be for us to buy as many pairs of shoes as——

By Mr. Kaplan:

Q. (Interrupting.) Brown shoes?

A. Brown shoes—just like if it was International or any of the other operations, buy as many of those shoes—of course, the principal reason I buy them, to be frank with you, the reason I buy franchise shoes or Brown shoes is the fact that they have got the backbone and they wear, because I devote all of my business today of good merchandise as well as making——

Q. (Interrupting.) Well, I understand that, sir, certainly.

A. Good merchandise and the shoes wear.

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[fol. 462] The witness borrowed money from Brown in 1947 for his Abilene store. The amount of that loan was \$12,000.00. The purpose of the loan was to stock the place and go in business. He opened that store new. It was his only sad operation. He stayed 5 years and then closed it up and moved. He also recently took a loan from Brown for his Tyler store. That was made on February 10 or

February 15 of this year, 1961. It was for \$25,000.00 and was for the purchase of the store. Buying the store means buying stock that was already there.

With reference to the Tyler store, the witness had mentioned Revelations as another line. That is a casual line of wedge heel type shoes. A good casual line of shoes that you can make money on and have soft cushion soles. They are women's all woolen shoes. He has been carrying them since he opened the store at Tyler, and has sold a good many of them. He would say that he has bought somewhere around 300 pairs at the present time. He also mentioned Sebago suede loafers. That is a good basic college girl, high school girl, grade school girl's loafer, which he sells for \$7.99. He has approximately 250 pairs.

Redirect examination.

The loan in connection with the Tyler store was just a matter to buy and operate the store with. He didn't have to have the loan. It was to pay the previous owner and to buy stock. Floor stock, fixtures, big neon sign on the front, and that didn't pay for all of it because he took over the obligations of account which were to be paid and which he did pay on the 10th of the month following. There might have been a couple of thousand dollars there that was surplus to buy additional stock. Shoes like Deb had been shipped in three, maybe four months ahead of time and he had these obligations. He used some of these loan proceeds to meet those obligations. Some of the loan [fol. 463] proceeds were used to pay invoices for the purchase of shoes other than Brown shoes. There was twenty-three hundred and some odd dollars of other manufacturers goods.

EVERETT McLAIN, called as a witness for the Respondent, testified as follows:

Direct examination.

He lives in Alva, Oklahoma, population 5500. The population of the trade area is possibly 18,000 to 20,000. He is in the shoe business and has a shoe store called McLain's Shoe Store located in Alva. He opened it in 1948. It is on

the Brown franchise program and has been since its opening. The witness has been in the shoe business since he was 14 years old, approximately 40 years now.

In the store he carries, in Brown lines, Naturalizer, Life Stride, Pedwin, Busters and Robin Hoods. He also carries Dean's Musketeers Paradise, Cobblers, Urbanites, Jolenes, Tober-Saifer and Fiancees. He does not carry Roblee because he did not make any money out of them and quit buying them. He dropped the line last season. He has not replaced it with another line and he does not know whether he will or not.

He uses U. S. Rubber for a canvas and rubber footwear supplier. He has purchased from U. S. Rubber since 1948, and purchases through Brown. He has no reason to believe that he receives a better price for canvas and rubber footwear that he obtains through U. S. Rubber Company as a franchise dealer, than he would as a non-franchise dealer.

Q. Do you have a written franchise agreement?

A. Yes, sir.

Q. Do you refer to it from time to time?

A. No, sir, I don't even know where it is, I don't believe.

Q. Has Brown ever referred to that agreement?

A. No, sir.

Q. Never since you signed it?

A. No, sir.

[fol. 464] Brown has never told the witness that he could not carry an outside or conflicting line of shoes. Neither Brown nor anyone from Brown has ever asked him to stop carrying an outside line or a conflicting line of shoes. Neither Brown nor anyone from Brown has ever told him that he must carry any certain Brown line. He feels completely free to buy any lines of shoes he chooses, and continue to be a Brown franchise dealer.

He carries life insurance on himself through the group life available through Brown, but he does not purchase the business insurance through Brown franchise. He gets his business insurance locally from a customer of his store. He has never compared the cost of that insurance with that available through the Brown franchise program. He doesn't know what the difference is and he doesn't know if there is any saving.

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[fol. 465] He has never purchased any shoes made by the Juvenile Shoe Company, who makes Clinics and Lazy Bones. He thinks a competitor carries both of them. He knows he carries Clinics, but he doesn't know if the competitor carries Juvenile or not. The competitor is Warrick. The fact that the competitor carries a brand name shoe does not have any effect on his decision as to whether he will carry that or not.

The witness has bought Deb shoes for 5 or 6 years, up until the present season, and he kicked them out. He is not going to buy them this season because he wasn't making any money on them, so he changed over and bought Adores instead of Debs. No one from the Brown Shoe Company ever told him he could not carry the Deb line and no one asked him to cease carrying the Deb line.

He never purchased any shoes from the Freeman Shoe Company, but Warrick, his competitor, carries some of them. He has never purchased from the Weyenberg Shoe Company. They used to be in town, but the company went broke or sold out and it isn't any business any more. They had a men's clothing outfit named Brice and Huff for an outlet.

He has never purchased any shoes from Huth-James and he does not ever recall being called on by a salesman from Huth-James Company. He has never purchased any shoes from the Leverenz Shoe Company and has never been called on by a salesman from that company.

Cross-examination.

He bought Adores this season and has not had any in the store yet. He bought 186 pair of them 3 or 4 days ago. The price range of that shoe is \$14.95. They are a real high style woman's shoe. He is not carrying the full line. He just picked what he wanted out of the line. The Musketeers is a flat line, flats and casual line. It retails for \$8.99 to \$12.99. He buys quite a few of those and he imagines that he sells 500 pair a year. He would say that an approximate total pairage of the whole store last year was 7500 pair, but he doesn't want to be held to [fol. 466] that estimate. Sun Cals, a California company, makes the Musketeer line. Their distinctiveness is that they are a real high style shoe. He would say that it is

a hot shoe, a real good looking shoe. Brauer Brothers Shoe Company in St. Louis makes Paradise shoes. He buys the Kittens. He just buys one or two shoes from them. They're a round toe with a little heel on them. Cobblers is a high style flat line. He buys 4 or 5 shoes from them. He picks the ones which he feels will do a real good job in his store. In each company he buys from he picks what he thinks will sell in his store, to bring a rounded out program of shoes. That includes Brown. They go in just the same as the others.

He does not find that this brings him any inventory difficulties. That applies also to Urbanites and the Jolenes and Fiancees. Whenever he feels that the Brown Shoe Company is not adequate he goes away from them. Where he feels they are, he stays with them.

With reference to the three categories of shoes in his store, men's, women's and children's, his leading line in women's is Life Stride. For children it is Buster Brown. He doesn't do much mens business, mostly women. But for the men that he does sell to, his leading line would be Pedwin.

His competitor, Warrick, which carries the Juvenile and Freeman lines, is an International store. It has mostly International shoes. It is also a family shoe store like his, and it is of comparable size.

The witness reiterated that he carried the life insurance provided by the Brown franchise program, but that he did not carry the business insurance. He does not use the Brown window trim service or the architectural service, nor does he contemplate using that in the future. He just got through remodeling and he did it himself. The sign he has outside his store just says McLain's. He bought it himself when he started the store. He uses the accounting and inventory system provided by the Brown franchise program, and finds it very helpful.

[fol. 467] In reference to the Brown franchise contract that he signed, it is his understanding that he is going to get this very helpful accounting and inventory assistance.

Q. Now, what do you feel that is your obligation toward the Brown Shoe Company in return for this very valuable inventory and accounting assistance and other valuable assistance?

A. I don't feel obligated, I don't feel obligated.

Q. Do you feel that you are, they would do this for anybody else?

A. Boy, I never thought about it.

Q. Do you remember the provisions of the Brown franchise contract?

A. No, I don't.

Q. Do you remember any of the things that you were supposed to do when you signed this contract? Did you think you were getting the services for no reason?

A. Well, truthfully, I don't believe I do, I just was going to buy shoes from Brown Shoe Company and they're going to send field representatives out there to help me.

Q. Uh-huh.

A. And they do that and I do, I buy what shoes I want from them.

Q. In other words, you were going to buy most of your shoes from Brown anyway?

A. I didn't say most, I said—no, I buy what I want from them.

Q. Would you say most of your inventory now is comprised of Brown lines?

A. That is a guess, I would say it would be 55-45, right close.

Q. Fifty-five in favor of Brown?

A. A 55 percent Brown and 45 percent another line, I would guess—that is a guess.

He thinks that he has a style shoe store. These old Oklahoma people are stylish he guesses—he sells a lot of style shoes. When the Brown fieldman visits him, they talk about and go over pairage and they find out the categories that are not producing what they should be producing. Then they talk about how they can raise them and they talk about Brown as much as they do about anybody else. If he is carrying Debs, they get it at the highest basis they can get it, and the Brown fieldmen help the witness do that. That is what the fieldman does and what he is supposed to do.

[fol. 468] The witness carried Debs 6 or 7 years. During that time every time he talked with the fieldman about his pairage and made an open-to-buy, it was just the same as any other shoe in the store. The witness decided he was

going to go into Adores because it was a little longer line. The fieldman was against it. The witness thinks that the fieldman wanted him to keep Debs for the reason that the witness was doing a good job with them. The fieldman is interested in him doing a good job.

For each of the Brown lines that he carries, there is a salesman that visits him as often as he can get him to buy something, too often he thinks. A couple or 3 times a season, if he thinks the witness is open to buy. That is not only Brown Shoe Company, that is all of them. They all want to sell.

When he opened his store he needed a little outside financing, but he didn't get any from anybody. He had a little trouble occasionally. He has never had an occasion to get a loan from Brown Shoe Company. As to any credit arrangement with Brown, he stated that he had been a little lax occasionally, a long time ago, but not recently. Instead of paying them on 30 days, he has paid some 60 and some 90 to Brown Shoe Company. They took his discount just like they're supposed to. No arrangements, whatever he could talk them out of he got, what he couldn't talk them out of, he didn't get.

Redirect examination.

In explaining what he meant when he said that Brown took the discount when he went over the 30 day limit, the witness said, when you have an invoice from Brown or any of the shoe companies, it doesn't make much difference whether it's Brown or another company, they give you 30 days. You get 2 percent or 5 percent at the end of 30 days. If you don't pay your bills at the end of that time they take your discount. That is what Brown did to him when he went over the 30 day mark.

[fol. 469] GUY SHIPE, called as witness for the Respondent, testified as follows:

Direct examination.

He lives in Ada, Oklahoma. He is in the retail shoe business, family shoe store there. He has owned a shoe store personally since 1930. He had a partner in 1930

and still has a partner whose name is Raymond Hill. Their stores have been known as Hill and Shipe Shoe Stores. The witness has a store in Ada and Mr. Hill has a store in Ardmore, and they have a store in Norman, Oklahoma. Since they took the two stores out of the partnership, his store is known as Shipe's Shoe Store and Mr. Hill's is Hill's Shoes, and at Norman it is still Hill and Shipe. They took the Ardmore and Ada stores out of the partnership about 10 or 12 years ago. The Ada, Ardmore and Norman stores are all under the Brown franchise program. When they were operating as the partnership of Hill and Shipe, they had Norman, Ada and Ardmore stores. Under their partnership they also had stores in Waco, Sherman and Corsicana, Texas. Along about 1959 or 1954 those were Hill and Shipe stores. In 1953 or 1954, their partnership still had the Waco store, and the Sherman and Corsicana, he believes, but they may have sold Corsicana before then. All the stores he referred to were on the franchise program when he and his partner, Mr. Hill, were operating them as Hill and Shipe Shoe Stores.

The witness could not give an exact date as to when they first started buying Deb shoes, but it was back after World War II, soon after World War II, about the time Deb started in business actually. They were under the Brown franchise program at that time. They bought the Deb shoes for about 3 or 4 years. As to why they stopped buying those shoes, the witness said, we were buying those shoes at a time they were making money for us and then at a time they were not making money for us and come the time when we were selling more of them on sale than we were at regular price and we felt like we did not need them any longer. That was why they discontinued buying Deb shoes. No one from Brown Shoe Company ever told them they had to discontinue buying Deb shoes. That was a decision of his business organization. Since that [fol. 470] time they have not purchased Deb shoes. Their being in the Brown franchise program had nothing to do with discontinuing the purchase of Deb shoes.

Cross examination.

The witness was asked to clarify in which stores they carried the Deb shoes. At one time they carried them

in all the stores, all six of them. They no longer own the Waco, Sherman and Corsicana stores. They were disposed of at different times and he does not have the exact dates on it. Approximately, however, they disposed of Waco first, and that was about 10 years, something like 1951, then the Corsicana store about 7 years ago, and the Sherman store about 3 years ago. The bookkeeping was all done in their Ardmore store, so as far as the dates and things like that, he wasn't as familiar with that. Their Ada, Ardmore and Norman stores are still functioning.

They began selling Debs soon after World War II. As to what features about the shoe attracted them to Deb, he stated that at that time they had a shoe that no one else had in their neck of the woods. It was very popular with the young folks and it was a shoe that they bought and made money on for a while, two or three years. They dropped the line about four or five years ago. Other manufacturers came out with styles which were comparable to the Deb shoe. Brown did not come out with the type of shoe they had in the beginning, but it seems that the newness had worn off of those shoes and it was no longer acceptable. It was no longer a hot shoe. As to whether something put out by Brown was just as satisfactory, the witness said, we just didn't need the shoes any longer. Life Stride or Naturalizer from Brown did not come out with something comparable to the kind of shoes that were selling in the beginning. Later on, when their sales of Debs began dropping off they could buy them anywhere they wanted to, and that included Brown. As to whether the Deb Shoe Company actually conflicted with what Brown was offering them, he said, there might have been an overlapping. In other words, when it came sale time we had more of their shoes to sell. They could get what they wanted from Brown.

[fol. 471] They do not have a written franchise agreement with Brown. They receive some of the services from the Brown Shoe Company. They had a fieldman who visited them 2 or 3 times a year. They use the accounting service in all their stores. He has group life insurance through Brown. They also have fire and theft insurance through Brown.

Brown shoe salesmen visit them regularly from each of the divisions, 5 or 6 times a year for each division or line.

Q. I see. Mr. Shipe, what is your understanding as to what you are to do in turn for these services provided you by Brown?

A. We had no contract.

Q. No—what is your understanding, I understand you have no written contract.

A. Well, in other words, we concentrated on Brown lines of shoes because we have a family shoe store and they have, I'd say about 75 percent of what we needed to run our store.

Q. It was your understanding you would buy these from them?

A. Well, we buy what we feel we need.

Q. That 75 percent or so?

A. In that neighborhood, I should say.

Redirect examination.

Brown Shoe Company has never told them that they could not carry an outside line other than Brown. The carrying of lines is their business decision, based on what they feel they can make money on. That's what they are in business for, and that is what determines the lines of shoes they carry. The witness has never been told they must carry certain Brown lines. They feel free to buy any line of shoes they wish. That is the policy upon which they have been operating since they have been under the Brown franchise program. There are salesmen from various shoes companies calling on them from time to time, besides Brown, and they are free to buy any of their lines that they desire, and they have done so from time to time.

[fols. 472-482]

May 18, 1961

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[fols. 483-486] GEORGE H. CROKER, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness resides in York, Pennsylvania. He is field representative for Brown Shoe Company.

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[fol. 487] As a field representative of Brown Shoe Company the witness does not have any instructions from the company as to having franchise store people discontinue outside lines. He does not have any instructions with respect to conflicting lines. When he came with the Brown franchise division Mr. Johnston said one thing to him that has always been uppermost in his mind. Mr. Johnston said, "George, remember one thing, these stores are owned by independents and you have worked for a chain where you could go in and tell them what to do, but you cannot do it with independents because it is their stores and you must always remember that is so." And that is exactly how he feels about it, and always has. That is the manner in which he has conducted himself.

The witness was shown Commission's Exhibit 36. He recalls receiving such a memorandum from Mr. Curtis [fol. 488] shortly after June 27, 1958. In reference to the instructions set out in that memorandum, in the course of a few weeks the witness visited Shugart's and discussed the purchase of the American Girl line, which was in keeping with the program because it was shoes that Mr. Shugart felt he needed. After discussing it with him the witness agreed that he needed them too, and he bought them and he still has them. It was not the witness' purpose in discussing that subject with Mr. Shugart to endeavor to have him discontinue carrying those shoes in his store. The witness said the purpose of discussing it was to be sure that he was not overbuying, and by overbuying he would have to take markdowns and therefore would not come up with a profit. But as it was he had sufficient openings to buy for what he had in this line.

As to whether it would have been part of the witness' work as a fieldman to give him directions as to what he should do if he had been overbought, the witness said, no, sir. We analyze the situation and we recommend. He makes the decision himself. We want to see them make

a return on their investment. For that reason we recommend strongly that he should not be overbuying, not on this line or any of the Brown's lines.

Shugart's is still carrying American Girls as far as he knows. In other words, he in no way interfered with Mr. Shugart's decision to carry American Girls. He made no attempt to interfere with his decision to carry American Girls.

Cross-examination.

The witness has been with Brown Shoe Company 7 years. He has been a fieldman all that time. He had Pennsylvania, Virginia, West Virginia, for his territory at one time. Today he has Pennsylvania alone. He had some stores in Delaware, too, at one time.

His duties as a fieldman are to observe, analyze and recommend—in three words—and he visits stores in this program periodically. He goes over their figures as far as performance is concerned and with the store owners he discusses the progress, the profitability of their business. When he says figures and profitability he is not just talking about Brown Shoe. He is talking about the total, the whole store. In other words, if a man does or is planning on carrying what he might consider conflicting lines, he will discuss it with the witness possibly. It is pretty difficult to estimate what a store is going to do just by considering only a portion of the inventory. They discuss the whole inventory.

The witness reports directly to his home office in St. Louis. As to how frequently on the average he speaks with them or writes to them, it is sometimes once a week, sometimes not as often. It is hard to say because it depends on what you are doing and actually he has been the world's worst to send in reports on certain things. He talks to them sometimes by phone, not too often. He is supposed to file monthly or weekly reports, but he has not been doing it very conscientiously. He does have the summary report from the stores that they get every month. They can look at the figures to see the progress of the stores. That goes in from the store, not from him. They like to know his observations on the operations of the

stores. The witness sometimes sends in reports. They require it but sometimes he does not send them in; it depends.

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[fol. 501] COLLOQUY

Hearing Examiner Creel: On the record.

I just said off the record that I didn't see any particular point in calling additional Brown franchise dealers, that I would assume that most of them would testify pretty much along the lines of those that have already been called to testify.

Mr. Burke: If counsel for the complainant would so stipulate I believe it would expedite the hearing.

Mr. Kaplan: I don't think a stipulation is necessary from us, sir.

Hearing Examiner Creel: All right. You are not required to do it. But I do make that assumption, myself, that while details will be somewhat different the testimony should be about the same and for that reason I don't see any reason to go to different sections of the country to call that same type witness.

Mr. Burke: I can certainly appreciate your attitude, and I think your assumption is correct and a valid one; I am sorry that counsel for the complainant sees fit not to so stipulate. However, as I remarked, the testimony adduced in support of this complaint by several manufacturers who seemed addicted to name dropping in various parts of the country and evidently characterizing certain practices that seemingly had regional tendencies, in order that this respondent may adequately protect its rights in view of that type of testimony we feel compelled to introduce evidence that will show that the contentions made by a number of these witnesses are in error and inaccurate and that we propose to do, and, as I say, it is burdensome on this respondent, but we have that burden due to the nature of the evidence that was put into the case.

Hearing Examiner Creel: Of course, I am going to permit you to rebut any specific evidence that you choose to, but some day before too long I think I'm going to call a halt on the general dealer testimony.

Mr. Burke: Of course, I may remind you, sir, we have endeavored very conscientiously to refrain from cumulative and repetitive evidence to a large measure. A great deal of the testimony has been for the purpose of demonstrating the validity of the position that this respondent takes on various aspects of the franchise program.

Hearing Examiner Creel: Well, I just wanted to give you some notice of the way I'm thinking about this particular kind of testimony.

July 14, 1961

ROBERT P. HOWE, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness resides in San Bernardino, California. His business is a family shoe store. He has been in the family shoe business 22 years. His store name is Howe's Shoes, Inc. It has been on the Brown franchise program 22 years. The brands of shoes he presently carries in his store are Wright Arch Preservers, Roblee, Sherbrooke, and Evans, DeLiso Deb, d'Alexis, Risque, Debs, California Cobblers, Musketeers, Danie Green, Buster Brown, Glamour Deb, Child Life and U. S. Keds.

The fieldman of Brown Shoe Company that calls on the witness is Mr. Val Kemp. He calls from 4 to 6 times a year. The fieldman aids in the preparation of buying guides, promotion programs, and the year-end closing statements.

The witness uses the accounting forms that are furnished under the Brown franchise program. He has used those for the full time that he has been in business. He participates in the group life insurance under the program. His business insurance is carried through the Brown program. As to the window trim service, he does his own program. He has had occasion to borrow money from Brown. That was done when he originally started in the shoe business 22 years ago, and in 1955. There were no

conditions or restrictions placed on those loans as to how [fol. 503] he would use the money. There was no condition or restriction as to the buying of Brown shoes in regard to those loans. There was no condition or restriction that he would not buy other lines of shoes in connection with the loans. The loans were on a time payment basis over a three-year period, and the most recent one has been paid according to plan.

U. S. Rubber Company has basically been his sole source for canvas footwear. He has used, this past season, merchandise from Hood. No one connected with Brown Shoe Company has told him that he shouldn't buy from any other source than U. S. Rubber. He purchases U. S. Rubber goods from the local salesman. He has made no investigation as to the prices he receives in buying U. S. Rubber, as to whether being on the program his prices are any different. He has always bought on the program. His billings from U. S. Rubber are billed on memorandum from U. S. Rubber and the subsequent invoice comes from Brown. It's always been done that way for the entire time that he has been in business. No one told him he had to do it that way to be on the Brown program. That is a choice on the part of the witness. He has no way of comparing the price of the product that he is buying from Hood Rubber Company with similar types of products from U. S. Rubber, because it's an item that U. S. Rubber did not make.

As to the meaning of the term "line concentration," the witness said, it means that in a given category of footwear, by type of footwear, relative to use or price range, we concentrate all our merchandise and efforts on a single brand in order to gain the greatest advantage from a merchandising standpoint. It eliminates duplication. Two lines involve duplication, which increases the inventory and reduces the turnover. That is a most important area in shoe merchandising because the merchandising of footwear involves a high inventory cost in respect to sales, and the greater return on the investment is produced by the greater turnover. Duplication reduces the turnover, and therefore, from a good merchandising practice, it is best that we maintain as little duplication as possible. The witness practices this policy of line concentration

[fol. 504] in his merchandising. There are overlapping areas in the lines the witness has, but they do not directly compete with each other.

For illustration of how this concentration works, the witness said, in the instance of men's footwear the great bulk of his business is done in the middle price ranges, from \$12.95 to \$17.95, which is represented by the Roblee line. He does not carry any other line of shoes that would fit into this same category as to price or type, because it would only duplicate any inventory. The duplication of a pattern in that price range of another brand would not necessarily increase his sales. It would increase the inventory and raise the investment. Generally the inventory problems are a result of duplication and overlapping of lines. You have to correct an inventory problem through the process of eliminating the overlapping area by mark-downs.

The witness himself determines the lines that he carries. He seeks to have the strongest lines from a sales advantage in each of the categories that he is merchandising. It is on that basis that he is carrying those brands he stated in the record. And that is on the basis of following this merchandising policy of line concentration. No one from Brown Shoe Company has told him that he must carry certain lines of Brown shoes. It is his own personal decision as to what lines he carries. No one from Brown has asked him to stop carrying other lines of shoes not manufactured by Brown Shoe Company. No effort has been made by anyone from Brown to compel him to stop carrying any outside or conflicting lines.

The witness has never signed a franchise agreement with Brown Shoe Company. He is on the Brown franchise program because of the services rendered by the fieldman and the program of bookkeeping and audits and controls. He is under no obligation to be on the franchise program. It is his understanding that the program is voluntary on his part, and should he wish to drop the advantages of the program, that he could do so at any time. Being on the franchise program, the witness does not have any obligation to Brown Shoe Company to buy their shoes.

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[fol. 505] The witness has been carrying Deb shoes ever since 1946 or 1947, he can't recall exactly. He would classify them as a line to fill a specific category, namely, flats and sports shoes. He carries Deb shoes because they produce a type of footwear which fits his merchandising program. He went into carrying Deb shoes at the time that the flat became very popular. Debs were the early producer of this type of shoe, a leader in producing flats. From a fashion standpoint it was a key line of flats, and he used the line because it represented an important part of his program. It performed well in the early years, [fol. 506] the first 2 or 3 years. After that the fitting qualities became quite poor, to the point that markdowns were quite extensive. That had a bearing on his purchases of Deb and he had to restrict his purchase because of the heavy losses incurred in markdowns. That occurred approximately 1950 to 1951. Other shoe manufacturers started making the types of casuals and flats that Deb started with. At that time the flat became a general category of footwear, produced by many manufacturers. The witness substituted other lines when he had this difficulty or he used the flats produced by his existing lines. No one from Brown Shoe Company told him that he should not carry the Deb shoes. No one attempted to threaten or coerce him to stop carrying Deb shoes. He has never completely stopped carrying Deb shoes. He still carries them.

He has never carried shoes manufactured by Juvenile Shoe Corporation. He has never had a salesman call on him to sell him Clinics. Clinics are carried in his town in a leased shoe department in a women's specialty store, and a department store. That is in his shopping area. The witness knows the brand called Lazy Bones. They are carried in his community at the department store, the same place that carries Clinics.

A salesman has called on him to sell Freeman shoes. He has never bought any Freedman shoes for the reason that he has the Roblee line which covers that particular category, and they are doing well, pleased with it, and he has no reason to add an additional line. Being on the franchise program does not prevent him in any way from making a decision as to whether or not to buy Freeman shoes. It was the fact that he had another line.

A salesman from Weyenberg Shoe Corporation or Shoe Company has never called on him. He is not too familiar with them. The name Port-O-Ped or Massagic refreshes his recollection. They have been carried in his community. What their present status is, he doesn't know. The type of store that carried them was a general shoe store, family shoe store. That store is still in business. He doesn't [fol. 507] know whether they are carrying that brand.

A salesman from the Huth-James Shoe Company has never called on him. A salesman of the Leverenz Shoe Company has never called on him. He doesn't know whether any store in his community carries either the Huth-James or Leverenz brands. He doesn't believe they are represented in his community.

The population of San Bernardino is 93,000, with a trading area of 200,000. They are other shoe outlets selling shoes in his community. He would estimate that there would be approximately 30.

Cross-examination.

The witness opened his shoe store on the Brown franchise program. He did not get a loan for that occasion from Brown. He originally opened in Anaheim, California, and after 2 years he moved to San Bernardino and opened. At that time he received a loan from Brown Shoe Company. He was a Brown franchise dealer in Anaheim. He purchased that store and it was a going franchise store.

At the present time approximately 70 percent is the percentage of dollar volume that he sells in Brown shoe lines. The percentage of Brown lines in his store inventory would also be about 70 percent.

He purchases U. S. Rubber Keds and other canvas footwear and he supplements this with another line. He first started buying U. S. Rubber goods 22 years ago when he opened up his San Bernardino store, and he also had them at the Anaheim store. They were in there when he purchased the Anaheim store.

He has used the window trim service of the Brown franchise program, but not for a number of years. He used the architectural services provided by the Brown franchise program once, in 1947. He has a large neon

sign in front of his store that says Howe's Shoes. He got that sign through his own purchase. He has no neon signs that were given to him by Brown. He bought the Howe neon sign approximately in 1950. He did not inquire at Brown whether or not he could have gotten one from them.

[fol. 508] The witness does not feel any obligation towards Brown for the services such as accounting and inventory assistance, insurance plan, and loans, provided by them. He would feel free to go and buy shoes from somebody else, say 70 percent of his inventory from some other company, and still receive those benefits and services. The witness does not look upon these things as services. He looks upon them as part of doing business, and if they were withdrawn from him, he would have to seek the insurance or the bookkeeping from some other area. He doesn't know whether he would expect to continue to receive these services from Brown in the event he did buy a large portion of his inventory, such as 70 percent, from someone other than Brown. As long as he needs insurance and as long as he needs a bookkeeping program, and they continue to offer this to him, he will continue to use it. It would be up to them to withdraw it from him. As to whether he knows of any other source of these services or benefits, he said he would turn to an accountant, or to another source of insurance. He assumes that would cost him quite a bit of money.

His principal line in women's shoes is Air Step. He would say that Red Cross is a more well-known line of shoes. As to whether he would have any trouble merchandising Red Cross, at the same time having his principal line of shoes in men's and children's from Brown Shoe Company, the witness said in the first place he couldn't get Red Cross shoes. They are not open in his community, and they never have been since he has been in business. The witness feels that Roblee is the strongest line in its particular price range. If Red Cross was available he would not consider taking it in lieu of Air Step. He has had Air Steps for 22 years and has built a following on this line of shoes, plus he owns an inventory, and changing stocks is a costly factor. Red Cross shoes are manufactured by U. S. Shoe Corporation.

The witness does not have 200,000 people in his trade

area that he might sell shoes to, who would all come to his store if they needed a pair of shoes. He has a family shoe store, priced for the upper level of the consuming market. Approximately 11 other shoe stores in his area [fol. 509] are directly competitive with him. They are all family shoe stores or department store departments. Three of them are on franchise programs of other companies to his knowledge, and two are company-owned stores.

The first loan the witness got from Brown was made back in the three-year period which he mentioned. He has approximately 150 pairs of Deb shoes in his store at the present time. He mentioned in his direct testimony that he carried a DeLiso Deb, made by Samuel Shoe Company. The 150 pair figure he just gave, was for the Deb Shoe Company, Washington, Missouri. The reason why he substantially reduced the number of Deb shoes that he had in his store was that they had poor fitting qualities. As to why he still carries 150 pairs, if they have this drawback, the witness said they have several specific types of shoes that he has developed a clientele for, that represent fine value and fine fitting qualities, and he carries these for these clientele, namely the Deb Brittony Tye. That never has suffered from the same poor fitting quality that the other Deb lines have. The top number of Deb shoes that the witness has had in his store since he first started buying Deb, is between 500 and 600 pairs. That was probably in 1948 to 1949. At the time they were at their peak. Brown Shoe Company brought out lines that were similar to Deb's subsequent to that time. The witness bought these.

Redirect examination.

In regard to the matter of bookkeeping and insurance, the witness has not had any occasion to make any study as to what it might cost him for the type of paper records for bookkeeping purposes that are presently furnished to him under the Brown franchise program, if he chose to acquire them elsewhere. There is a stationery store in his town; they sell forms for bookkeeping. He has never made an investigation as to what that might cost. He has never made any similar cost comparison in regard to insurance. He has insurance brokers in his community.

[fol. 510] JEROME HOFFMAN, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness lives in Los Angeles, and his business is the retail shoe business. He has two stores that he owns outright and a half interest in a third one. One of these stores is located at 258 Harbor Drive, Redondo Beach. Number two is 65 Pier Avenue, Hermosa Beach, and number three is 842 East Valley Boulevard, Alhambra. The population of Redondo Beach is approximately 35,000. The population of the marketing area that he draws from is roughly around 40,000. The population of Hermosa Beach is 17,000 people. The population of the trade area he draws from there is probably 20,000 to 25,000. He guesses the population for Alhambra is about 75,000 to 80,000. Trade area is about the same.

He opened his store in Redondo Beach in 1952. He bought a store that was in existence, an International Store. It was an International set-up completely as far as he knows. They were on the Merchants' Service Program. That store is now a Brown franchise store. It went on the program as soon as he bought it in 1952.

Number two, which was Hermosa Beach was a Brown franchise store when he bought it in August of 1958. The Alhambra store was a General "set-up" when he bought it two years ago, in July, 1959. By "General set-up", he means the store was basically buying all from General. He thinks they were financed by General somewhat. As to whether he is familiar with General's franchise program at all or whether they have a franchise program, the witness has always understood that they loaned money to stores, but he has never looked into their situation. They never contacted him.

He was in shoe retailing part time about a year and a half, then he got about 11 years full-time experience in it. He is a graduate of College, Bachelor of Science, and majored in Economics.

The Brown brands he carries in his shoe stores are: in children's, Buster Browns and a few Robin Hoods; in [fol. 511] women's Smartaires, Naturalizers, and Life Strides; and Roblee and Pedwins, in men's. As to the

other brands of shoes in those stores, he carries: men's Florsheim Shoes, L. B. Evans casuals and house shoes, U. S. Keds, B. F. Goodrich and Orthopedics from Walkin Shoe Company. He carries pretty nearly the same brands in all stores. There are a few variations, but basically the same brands. In Alhambra he's having a hard time getting Florsheims, but thinks he is going to get them this season, because of other conflicting stores in the area. Basically he tries to carry the same brands. He carries a few Sabel orthopedics, C. H. Aldon orthopedics and Simplex orthopedics.

The witness buys flats from whoever he wants. Actually flats are sort of a fast thing out there, and he buys them wherever he can get the styles he wants; maybe with a jobber one season, or a direct source such as General or International the next season.

He carries Fiancees up until about 3 years ago in Redondo Beach. He dropped them because he felt that the May Company priced the shoes at such a price that he couldn't compete. In the shoe business, in women's shoes, to break even you have to make at least 43 percent gross, and in high style shoes you have to make at least a 45 to 48 percent markup. The May Company was getting about 38 percent on those shoes, which he doesn't know how they did it, unless they were getting a better price than he was. It was impossible for them to do it without some type of advertising allowance or something. So even though he really liked the shoes, at the time better than Life Strides, but he's not in business for his health and he couldn't make a profit on them, so he dropped the line. The May Company is May Company retail department stores.

The witness mentioned he was having trouble getting Florsheims in the Alhambra store because another store had them in the area. This is a factor normally considered by a manufacturer or supplier of shoes, and by a prospective buyer. It's a factor both ways. If you've got the line you don't want anybody else to have it, and if you [fols. 512-513] haven't got the line and you want it, you're trying to get it. It's simple. In this situation Florsheim has an old account that's been in the town for years, even though he's downtown, and he's been fighting the situation,

and in fact he went so far as to try and get a store in the shopping district the witness is in, which he couldn't get. And that was just consummated this week, the witness got a written guarantee of no other family shoe store, so he guesses he will get Florsheims for the fall in there.

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[fol. 514] His fieldman from Brown is Val Kemp. He visits the witness on the average probably two, three times a year, maybe more. When he visits they usually discuss inventories, is he getting enough turnover to make a profit, his markups, maybe general economic conditions in the area. Sometimes he may want advice on a lease that he's going into, or something of this type, and he will call the fieldman, who will come over and discuss it with him. The witness finds this very helpful.

The witness makes out monthly reports in connection with the franchise program. He makes out an open-to-buy. As to its purpose, he said, you have to have an over-all plan, to be successful in retailing, you just can't fly by the seat of your pants any more, and the more scientific you get about it the better chances you've got of making a profit. The witness purchases the life insurance available through the Brown franchise program. He has never made any comparison as to what the cost of the same life insurance purchased somewhere else would be. He does not purchase group business insurance through the Brown franchise program. He buys that from a local insurance agent. As to whether he has made any cost comparison as to that insurance, he said, well, that's the reason. He had Brown insurance when he first went in business. It might be five or six years ago when he switched over. For the same amount of premiums, he got a better insurance, what they call a marine block insurance in retailing, and it gives him a much better coverage for the same money, and so he switched over to that. He buys that locally, not through the Brown franchise program, but from an insurance agent in Redondo Beach.

He has used the architectural services available from Brown. Mr. Moore of the store planning division was out numerous years ago and helped the witness out, re-

designed his store so that he could get more stock space in it.

There would be no reason to compare what the cost of that service that Mr. Moore furnished would have been if he got it locally. He is very competent, an expert [fol. 515] in his field. The witness does not use the window trim service available through the program. He has received a loan from Brown Shoe Company. He received a \$10,000 loan just about the time he bought Hermosa Beach. It's been about three years. There was no condition on the granting of that loan, that he would go on the Brown franchise program or buy Brown shoes. The only conditions were like any other conditions when you take a loan, that you pay it back, with a certain amount of interest. Those are the only conditions that pertained to the loan at all. The witness had a schedule of payments. He met those payments. That was his total obligation. As to whether he used the money proceeds of the loan to buy only Brown Shoes, he said, no, he just threw it into his checking account. Due to buying two stores within a period of a year, he was bound up for cash, so he just used it to pay up bills to all his sources. Everybody that he owned money to.

His rubber and canvas footwear suppliers are U. S. Rubber Company and B. F. Goodrich. And, Topsiders, he forgot to mention, who are a very small part of his business. The U. S. Rubber Company makes those, but it's a separate company. He receives the same terms exactly from both U. S. Rubber and B. F. Goodrich. He has no reason to believe that as a Brown franchise dealer he receives a special discount or any better terms from U. S. Rubber Company on that type of footwear than he would if he were not a Brown franchise dealer. He gets the same terms from B. F. Goodrich, the same dating and everything exactly, and he only buys maybe 10 percent as much from them as he does from U. S. Rubber.

The witness decides what brands of shoes he carries. No one from Brown Shoe Company has ever attempted to force him to carry Brown brands. Nobody has ever told him what to carry in his store, except the salesmen that call on him naturally tried to get him to carry their brands. As to whether anybody from Brown ever tried

to coerce him into dropping an outside line of shoes because he was on the Brown franchise program or for any other reason, the witness said, well, just one other [fol. 516] reason. When Val Kemp took over as fieldman he tried to get me to drop some casual type shoes which he felt were much too cheap for my type of operation. It was not a conflicting line with Brown, because they don't make anything in this area. He felt that I was carrying merchandise that was too cheap for my type of merchandise in my stores, which proved out to be true, and I later dropped them. After getting burned a couple of times I later dropped the lines and picked up better casuals.

It is accurate to say in connection with the Brown franchise program that Brown has never attempted to tell him what to buy or what not to buy.

The witness has never been called on by a salesman from Juvenile Shoe Corporation. He has been down to the sample room maybe 8 to 10 times trying to get Clinic shoes, but he's never been successful at getting them in his stores. As to why he can't get them, and whether someone else in town carries them, the witness said, at one time somebody else did carry them, but they moved out of my trading area basically, they moved quite a ways away. But every time I talk about Clinic shoes he talks about Lazy Bones, who are their children's line, and I don't need this line of shoes. Like I say, I've tried to get the line because it is a good line of women's shoes, but I talked to a couple of friends of mine that happened to know this salesman very well, and they said the reason I can't get the shoes is, its very simple, because I don't buy his children's shoes, so he won't sell me his women's shoes. He's promised to call on my store two or three times and discuss it with me, and he's never called on me yet. The store referred to is Redondo Beach. The witness would like them at all three stores, but basically for Redondo Beach and Hermosa.

He was called on by someone from Deb Shoe Company about 7 years ago. The salesman called on him once. The salesman needed some shoes for a friend of his, and the witness ordered them special, and he came back and picked them up, and that's the last the witness has seen of him. He doesn't believe they have the salesman any

[fol. 517] more. As to why the witness wasn't interested in buying those shoes, he said, because he thought they were overpriced shoes. And they could be bought out of Crown Shoe Company, which most merchants that buy Debs don't realize, that the name doesn't mean anything. It had a couple of hot seasons, 10, 12 years ago, but actually you can buy the same thing from Crown, who makes Debs shoes. You can buy the same shoes for a buck and a half, \$2.00 a pair cheaper.

A salesman from Freeman Shoe Company was in the witness' store one time. He was looking for directions to find another store in the area that he called on. He's never been in since. He never even discussed selling Freeman shoes. He has never been back to try and sell the witness, who said, I saw him at the Shoe Show, and we laughed about it. That's the only time he's ever been in the store was to find the other store. He was looking for directions.

The witness has never had a salesman from Weyenberg Shoe Company call on his store. Wyenberg shoes are sold in outlets or stores in the whole Southern California area. Their biggest source of distribution is outlet-type operations. An outlet-type operation is an operation that cuts prices because of different factors. They try and sell their shoes a little bit cheaper than what he calls plate glass stores. An outlet-type store can't give the same quality of fitting service that his type of store would, because there are no secrets in retailing. If you're going to give certain services and pay certain rent, your overhead is going to be such, and you've got to have overhead plus a higher markup than your overhead to make a profit, and they can't possibly sell shoes cheaper and give the same service and so on, the quality of fitting, and stand behind their merchandise.

When he came in the shoe business he was pretty new, but he had definite ideas. He had only worked on it maybe a year, and he told everybody in the shoe business, and everybody thought he was crazy, but the first slogan he put in his stores, which is on everything he puts out, is "We Guarantee Fit". Because you're a good store, [fol. 518] and you've got to stand behind your fitting anyway, so you might as well guarantee. But an outlet type of operation can't operate this type of a business on their markups.

Weyenberg's happen to have probably as good or one of the finest shoes in America for the price, but the fact that they do sell to outlets would be one factor why he would not buy these shoes. Number two would be that a lot of the boys band together in these outlets and buy big volume, and they can get a much better price than he can get on the shoes, so they can sell them cheaper and still practically make the same markup.

The witness does not know the Huth-James Shoe Company. It's foreign to him. He has never heard of their shoes, Snow Go, Sturdy Style or Floataways. He has never been called on by a salesman from the Leverenz Shoe Company, who make Calumet and Lake Line. He is not real familiar with that company because he never had reason to look up their lines. He can't think of a merchant that carries their shoes. It's just not interesting to him at all as a merchant.

Q. Mr. Hoffman, do you feel that you have any obligation to Brown as a franchised dealer?

A. Why, certainly.

Q. And what would that obligation be?

A. Well, its—I guess it's an obligation. I feel that any time that you have a friend, all things being equal, you give your friend some favors; just like if I have a customer and he—which happens in any business, being a local merchant I carry a lot of credit in my store, I carry 800, 900 accounts in Redondo Beach—and if a man is out of work or can't pay his bills and I don't give him a bad time over it, I carry him on credit, and the man gets back to work, or he pays his bills off, say he had sickness or whatever the case may be, I feel certainly that I should get his business, all things being equal, and that's how I feel towards Brown. They give me services and, all things being equal, I'll buy shoes from them. If I can buy shoes better, or better from somewhere else, I'll buy them. It's that simple.

[fol. 519] Q. Do you feel you have any legal obligation to buy shoes from Brown because of these benefits?

A. No.

Q. Have you ever told Brown that you will buy shoes from them in return for these benefits; as long as they continue to benefit you, you will continue to buy?

A. No.

Q. Has Brown ever asked for any kind of agreement like that?

A. No, there's never been any agreement of that nature discussed, pro or con.

Hearing Examiner Creel: Did you ever sign any Brown franchise agreement?

The Witness: You're asking me an embarrassing question. I may have, but I don't remember it.

Hearing Examiner Creel: Did you see one, that you remember?

The Witness: I don't ever remember reading one.

The witness has brand identification signs in the front of his stores. The biggest would be Florsheim signs and Buster Brown. Those are the two main ones. He is just getting a new Florsheim sign in the one store. He had a small one. It would be 16 feet high and probably two feet wide. It's made of a white plastic with a green background, lettering, "Florsheim Shoes". It lights up. They're using it instead of neons, because it's more effective. It is his understanding that he received that sign because he carries Florsheim shoes. According to the salesman from the Florsheim Company it's about a \$1500 to \$1600 value on that sign. The only thing it costs the witness is the installation price. His arrangement regarding the ownership or control of that sign is as long as he is a good outlet, or whatever you want to call it, or a good dealer for Florsheim Shoes, he'll keep his sign. It's that simple. And if he doesn't have Florsheim shoes he naturally can't keep their sign. He just has the use of it, is all. All he does is pay for the installation. It's their sign.

He does not know whether he has the same arrangement with the Buster Brown sign. He doesn't think there was any discussion with Brown at the time he was given the [fol. 520] sign. He asked them if he could have a sign. He has a sign in Hermosa Beach. He asked if he could get a sign if he bought the store, and the salesman said he'd see if there was one available. He said they didn't have too many signs to give out, but if he could get one he'd be glad to try, and he got it for the witness, and this was it. The witness paid for installation. He received that

sign for use because he's a Buster Brown dealer. There would be no other reason. This sign was not given in connection with the Brown franchise program. The witness saw the sign, that is the reason he wanted one. He saw one in Manhattan Beach from a competitor of his, who is a very good friend of the witness and he has a sign. The friend is not a franchised dealer, but he has the same sign. That's where the witness saw it.

Cross-examination.

The witness is a half-partner in the Alhambra store. When he opened the Redondo store in 1952 he does not believe there were any Brown lines in there. He bought a complete store, fixtures and inventory. He got rid of the International shoes there were in there by putting them on sale. The Hermosa store was a Brown franchise store when he bought it in 1958. The Alhambra store is now on the Brown franchise plan too. He went on the Brown franchise plan there in 1959 right after he took it over. Actually he took it over and then he went to Val Kemp, the Brown fieldman, and discussed it with him, after he bought it, and then he took in a partner. The witness is not in partnership with Val Kemp. He is in partnership with Kenneth Keatings. The witness did not get rid of the merchandise there, other than Brown, by a sale. He took the fixtures and store over and let the man out of his lease, and the man probably took his merchandise to his other store. The witness carries Florsheims in two stores right now. He's going to get it, he's sure, in Alhambra. He doesn't know if it's the principal men's line in those stores or not. He'd have to analyze the statement like that. He'd have to sit down and break it down dollarwise and profitwise to make a statement to answer [fol. 521] that. It is not close enough to cause doubt in his mind between Roblees, because Roblees are too close in price, and actually he sells many more Florsheims than Roblees, dollarwise and pairagewise. But there is a doubt as to value. He would have to make a study before he could answer that. As to whether he carries the full Florsheim line, all the patterns that they sell, the witness said their own stores can't afford to carry all their pat-

terns. They would go broke. It's too full a line to carry everything for one merchant.

He has more Florsheim shoes in the two stores than Roblee, but he doesn't have more than Pedwin. He would not say that Pedwin was the principal men's line in those two stores. You can't determine it by the percentage you carry, because a Florsheim unit probably averages \$24.00 today, and a Pedwin unit averages maybe \$11.00. When you say which your important line is, this is a broad question. If it came to a decision as to whether you would rather have Florsheims or Pedwins, there are many factors that come into a statement like this. It's not only a matter of dollars and cents. Maybe it's a matter of how much is the Florsheim name worth to you as prestige in your store, as far as the public when they look at your store. Psychologically it may be worth more to offset the profit factor, if there was a bigger profit factor.

The witness does not carry the expensive lines of Roblees. He supplements his Roblees with the Florsheim. He doesn't carry Roblees above roughly \$15.00, because he feels as a merchant why should he duplicate. When he can sell them a \$20.00 Florsheim, why should he have an \$18.00 Roblee sitting there. He might as well sell them the \$20.00 Florsheim, which gives him another 80 or 90 cents worth of profit for the unit. The approximate percentage of total inventory in his three stores that he sells to women is close to 35 percent, in dollar sales or pairs. The other 65 percent is mostly in children's types.

As to what the percentage of inventory in the Redondo store is made up in Brown lines as far as dollar sales and numerical inventory, the witness said, I can't tell you this. There would be no reason for me to spend [fol. 522] time analyzing something like this. I buy what I want anyhow, so what's the point in me deciding which is Brown's or which isn't Brown's. I might break it down by men's sales against children's, and by children's against women's, there might be a reason for this, and see where maybe I should put my efforts into children's business or men's business, but as far as me breaking it down as to which is Brown's and which is not, that would be a waste of my time, because if I don't want something that Brown has I don't buy it. And for example, they

are pushing orthopedics right now, which is any company's right to push any line they want, and I don't buy their orthopedics.

There would be a better reason to break down his inventory in one of the three stores, or all three, as to the men's, women's and children's shoes. He has never done it. The witness goes over his inventory every month by himself. As to whether from that study the witness can give an approximate figure of what percentage of that inventory is composed of Brown's lines, the witness said, when I break my books down I don't break it down by which is Brown's and which isn't, I just break it down by merchandise. In other words, as an example, my children's, I just bought a new line because I thought they offered something to my store. I don't know what amount of that new children's business—in other words, how much Buster Brown business that will cut out. I don't care. I make a good markup on those shoes, and this is my problem as a merchant. I never analyze the difference between percentage-wise how much is Brown, how much isn't, because I don't care. I buy lines for profit, and if it's Brown's fine. I'd rather give them the business, but if I can find another line that is better, I buy it. So in my mind there is no breakdown mentally for me at all because there is no barrier built up should I buy from Brown or shouldn't I. It's simply a merchandizing decision. And so there is no reason for me, when I'm looking at my books, to decide which is Brown and which isn't. On my Keds I don't even have it broken down which is Brown. Like, for example, all my Welts, 8½ to 12 would be H-1, is my category. I keep a per-[fol. 523] petual inventory every day, but I don't know which of that is Brown's and which isn't.

The witness definitely believes in the theory of line concentration. He applies it in his stores to an extent. Where he thinks it is profitable for him he applies concentration, definitely. His major lines in men's shoes are Florsheim's and Pedwins as far as he's concerned. They don't conflict. His principal lines in women's shoes—talking about Redondo and Hermosa, are Naturalizers and Life Strides. In fact, he may even drop Smartaires. It's a lower line than Life Stride, and he doesn't think there is a need. In Alhambra the principal line is Smartaires, Life Stride

is second, and Naturalizer is very small, depending on the area and what the area calls for pricewise.

The witness was asked by the Hearing Examiner, when he made out his open-to-buy, or when it is made out for him, whether it showed the lines that he is open-to-buy in, and how much in each line. The witness said, yes. He would show it much easier if he could refer to a sales record form. The Hearing Examiner said he was wondering whether the witness couldn't normally tell by his open-to-buy or any other record that he keeps, what his volume is in various brands. The witness said no he couldn't. He asked for a sales form. (The witness was then shown and thereafter referred to Commission's Exhibit 115). He said, all right, now here is an example. We'll go to here, because it's easiest. Here is our children's here, we'll say, H-1. These across here like this would be A, B, C, D, E, F, G, H, right across here, and off of that you take your daily pairage, off your tickets on our setup you take the category which these—everything in here would be H, for example, in my stores. This here would be like H-1, 2, 3, 4.

Now, H-1 says Buster Brown Welts, but I put everything in H-1 that is 8½ to 12 Welts, other than orthopedics, which is separate. So in Buster Brown Welts, although it says that, I may have four brands in there. I know I have Grow-Right, I have a few Walkins and regular shoes, I have Crider & Sons, and I carry my Busters. So it would all be taken off of this one column.

[fol. 524] When you open to buy, you look at your open-to-buy and it says, "Buster Brown," naturally, it's made by Brown, so when you're open to buy you open to buy 452 pairs of Welts between now and back to school, your first buy should be so much and your fill-in should be so much. It may say there Buster Brown Welts, but in any particular instance there may be five different brands in there.

It's the same all the way through. Even though it may say Naturalizer, I may have three or four brands there in that category of the same type of merchandise, see. It would be all conflicting merchandise. I do keep it like the column heads show, but in the same column head there may be, as an example, well, we'll take flats. Here is an-

other one like we were discussing. Who did I buy my casuals from? Well, I use E-5, it says here Robin Hoods, or Varsity Vogue flats, I probably got 10 different brands that I throw into that one category. They may include Robin Hoods or there may be five or six other brands in there.

So my open-to-buy is made up—I'm open to buy 400, 500 flats in one store. Taken off this list it's Varsity Vogue, but I may buy it from 10 different sources in that one category, or maybe I might only buy from Brown. It depends.

The approximate dollar volume from the three stores for the last year, taken together, was \$315,000.

WILLIAM AXLINE, called as a witness for the respondent, testified as follows:

Direct examination.

His home is La Mirada, California. He is in the retail shoe business, and owns two stores. One is located at 4740 Whittier Boulevard, East Los Angeles. The name of that store is Axline's Fine Shoes. The other store is also Axline's Fine Shoes, and is located at 245 Forest Avenue, Laguna Beach, California. His store in East Los Angeles is not part of the City of Los Angeles, it's in the county. That store was opened August 2, 1954. [fol. 525] It went on the Brown Franchise program in the same year, after he had opened.

In the East Los Angeles store, the witness carries the name brands in Brown Shoe Company. He carries Naturalizer, Life Stride, Roblee, Pedwin, and Buster Brown. Then in other lines he carries Hollywood Scooters, Goodman, Miller, and Buskin, Thorougheed work shoes, and a few Italian imports. He is the one who determines what shoes he carries. He makes that determination on the basis of sales and past records of the types of shoes and what the local community needs. He can switch to different brands at any time that the community calls for them. In other words, it is the performance of the shoes. In regard to his store in East Los Angeles, no one from Brown

Shoe Company has ever told him that he must not carry a certain line of shoe because he is on the Brown franchise program.

The witness started in business in his Laguna Beach store in August, 1960. That was a brand new store. As to the lines of shoes he carries they are not similar to what he carries in his East Los Angeles store. He has Clinic shoes and Freemans in addition to what he has in Los Angeles. There is quite a number—to enumerate them would take quite a while. Out of the wholesale district in Los Angeles he buys quite a few shoes from Solnit and Rifkin Shoe Company. They would be more on the casual line, sandals and that type.

The witness borrowed \$10,000 from Brown Shoe Company when he opened his East Los Angeles store. The payment arrangement was monthly. He had a 4 year term on it. It has been paid off. He borrowed \$13,000 when he opened his Laguna Beach Store, and that is being paid off now. That is on a monthly schedule also. There was no agreement between the witness and Brown, or any condition with regard to the granting of the loans, that in any way required him to buy Brown brand shoes. It was strictly a note and the money was in cash, and he could buy anything he wishes, either fixtures or shoes or whatever he wanted to spend it for. There was no limitation on the source of shoes, no tie-in at all on the note.

[fol. 526] He carries U. S. Rubber and Red Ball Jets canvas and rubber goods. There is duplication in some of the products he buys from U. S. Rubber and Red Ball Jets. As to whether there is any difference in price on this similar type of item, the witness said, very closely the same. Not much difference in them. It's just the name brand, that it's necessary to carry both lines. In his East Los Angeles store, he doesn't purchase the U. S. Rubber merchandise, he draws it from his Laguna store. The Laguna store purchases it there, due to the discount. He can buy larger purchases, so they take it through the Laguna store. He buys direct from U. S. Rubber. Being on the Brown franchise has nothing to do with the price he gets from U. S. Rubber. It would be the same price. It's billed through Brown. It's more convenient that way. He can have his bill monthly, and he can make one check for it.

It's much more convenient for the bookkeeper. He can have it either way he wishes. They bill him direct or through Brown. It doesn't make any difference. The purchase transaction is with a U. S. Rubber salesman. They send their representatives right to the store.

His East Los Angeles store is located right in the heart of the business community. He estimates in shoe outlets that in 6 blocks, there are approximately 34 shoe outlets. Three blocks on either side of his store.

A Brown fieldman calls on the witness. He is available any time the witness wishes to call on him, and he will visit the witness once every 3 months. The fieldman answers any questions that might arise that the witness can't get any information on, and helps with his bookkeeping problems, advice on leases or rentals, or practically anything that the witness would be in trouble on. The fieldman can usually give him a satisfactory answer or an unbiased opinion.

The witness buys group life insurance on the Brown franchise program. As to business, casualty or other types of insurance connected with his business, he said, originally he purchases the services of Brown, and after several instances, with his windows being broken, being in the neighborhood he is, he found that the service through [fol. 527] their agent here was too slow. In other words he had to wait maybe 6, 8, 10 days for them to get out to make an adjustment. So due to that particular fallacy, he changed and had his own agent handle his whole structure of insurance, that is, his home and his cars, and he found it to be more satisfactory. That's a much broader coverage on that basis than he was buying from Brown. As to the differential in cost, he has never figured it out, so he wouldn't know exactly, but he would say 10 percent. This includes the better coverage, better service, and adjustments would be much faster.

The witness thinks "line concentration" is very vital in the shoe business. The term to him means concentration of merchandise in a store. His stores become used to the lasts and the manufacturer and the service, and they can control their stock more efficiently by having less outlets, and if they concentrate into one particular line, the whole crew in the store is able to sell shoes better,

they fit them better and they're more used to them, rather than if they had 6 or 7 different factories in the same category.

A "last" is the wood that the shoe is formed over, and when they fit shoes, they have to clarify them as to shape and depth of the throat of the instep, also the short toe and the long toe, and the wood that the shoe is made over is the last of the shoe, and each is different, each last is different. Each individual factory would have their own lasts. International would not have the same last that Brown Shoe Company would. A particular brand of shoe in seasons, and staple shoes, have a uniformity as to last which stays the same. The fringe shoes would naturally change each season. The lasting of shoes is very important, to the fit of shoes. It's the most important part of his business.

In the operation of his two stores he emphasizes fit, first. That's because he's building a permanent business and the fit of the shoe is the most important part of the sale. The witness uses the way a shoe fits as one of the criteria in determining what shoes he carries.

Line concentration has no bearing in any other phase of shoe merchandising. He doesn't think it has anything [fol. 528] to do with his inventory. Naturally, if you concentrate with one company you don't duplicate, if you buy, say, a child's shoe in brown and you buy it from two or three companies, you could duplicate the pattern and get in trouble by having too many shoes in the same category. You'd have an over-inventory, financial trouble paying for them, you'd have too many shoes in the same patterns.

The locality determines the shoes the witness carries insofar as his stores are concerned. By the locality, he means, the people that come in your store and the type of shoes that they're interested in. He is in a Mexican settlement. Possibly 60 percent of the people in his East Los Angeles store are Mexican people, and they are very cautious as to children's shoes and very conscious as to children's shoes. Their children wear very few tennis shoes. In other words, they will buy a good sandal rather than a tennis shoe, and they're very proud when they go

to church on a Sunday that their shoes are properly fitted and look proper.

Most of the shoes from a total percentage of his inventory are Brown shoes. He carries Brown brand shoes because he has tried other lines in there to match with them, styles that he thought might be proper, but he found that the Brown shoe is a finer constructed shoe, and he is used to selling Brown shoes, and he does a better job with them. The witness does not carry Brown brand shoes because he is on the franchise program. It's the performance of the shoe, absolutely. If the shoes didn't perform, the Brown line shoes, the witness would kick them out. He is under no restriction or compulsion to carry Brown brand shoes because he is on the Brown franchise program. No person from Brown has ever attempted to have him enter into an agreement that requires him to carry Brown brand shoes.

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[fol. 529] The witness carries Clinic shoes at the Laguna Beach store. He does not carry them at his East Los Angeles store. The witness said, we called the representative of Clinic Shoe Company, and I guess he had taken a look at my store, and being a more orthopedic type store and corrective type fitting, why, he never called on me there. [fol. 530] And the explanation for that from the representative is the fact that we fit arches in our shoes and that the Clinic shoe was basically too soft and too flexible to hold an arch and would go out of shape too quickly, and they felt it would be detrimental to the Clinic shoes to put them into that type of store, so they never called on me. I asked them to, but they didn't. They are sold in the witness' area, within a mile and a half, but not in the 6 block area, even though there are 34 stores. He does have them in his Laguna Beach Store. No one from Brown ever told him he should not carry Clinics in his Laguna Beach Store. He carries a service shoe in his East Los Angeles Store. He carries the Buster Brown, the LaDue and the Ponca. Those are both service type shoes made by Brown Shoe Company.

He has never carried any shoes manufactured by the Deb Shoe Company. A salesman from Deb has never

called on him. He wouldn't know whether Deb shoes are sold in that 6 block area of his East Los Angeles Store. He doesn't think so.

He carries Freemans in his Laguna Beach Store. He carried Freemans in his East Los Angeles Store originally. No one from Brown ever told him he should not carry Freeman shoes or should discontinue carrying Freeman shoes. He did stop carrying them because they weren't for his East Los Angeles Store, they weren't the type for his particular neighborhood, so he stuck with the Roblee and the Pedwins, which were more superior for his community. When he said that they were not the type, that had to do with the way they sold and the way they fitted. And the store being very small, he couldn't concentrate in their line great enough to pick up their overall picture, so he dropped out of the line completely. That was his personal decision. He was not influenced in coming to that decision by any compulsion on the part of a representative of Brown Shoe Company. He carries Freemans in his Laguna Beach Store now. He didn't start out with them when he started his Laguna Beach Store, he added those later, in 1961.

The witness has never carried any shoes manufactured by the Weyenberg Shoe Company. A salesman has never [fol. 531] called on him in reference to that. Weyenberg shoes have been sold in his East Los Angeles area a number of years ago, but he doesn't think anybody carries them anymore. He has never carried any shoes of the Huth-James Shoe Company. A salesman from the Huth-James Shoe Company has never called on him. A salesman from the Levenenz Shoe Company, has never called on him. The witness has probably seen them in shoe shows that are given twice a year in Los Angeles, but he has never been interested in them.

As to whether the witness incurs any obligation to Brown as to buying any shoes, or any particular shoes or quantities of shoes from Brown, by being on the Brown Franchise Plan, the witness said, absolutely not. He can buy from one to one hundred pair any time he wishes. That does not put him under any obligation that he must buy Brown shoes. He would kick the Brown shoes out, if they didn't stand up to their standard wear and fitting qualities, irrespective of the franchise.

Cross-examination.

The witness signed a Brown franchise contract in 1954, to the East Los Angeles Store. He read it originally when he signed it. It's been so long ago. He was shown a copy of Commission's Exhibit CX-25-A, which is a Brown Franchise contract, and was asked if he remembered signing a contract which had the statement in it, entitled Paragraph (1) of CX-25-C. As to whether the witness remembered that language when he signed the contract, he said, I read it very thoroughly, and I was very satisfied with it. There was nothing conflicting with my running my business that I could see, or any danger to it. I signed this originally. I don't know whether this is the same one that I have or not, but I signed it in 1954.

Q. And do you remember this language: "In return for the services and benefits I will concentrate my business within the grades and price lines of shoes representing Brown Store Company franchise"—

A. Well, you're going back pretty far, sir, in '54, that's going on six and a half years. To say for sure on [fol. 532] that I wouldn't make a statement on that, but I did sign something similar to this. It's never been enforced, or I have never looked at it since I've signed it.

There is a possibility that that language was in the contract that he signed. The witness read it very thoroughly and he was very satisfied with it.

As to whether the witness testified on direct that he has most of his inventory in Brown lines, the witness said, he tries to keep this as close as possible, for business reasons, as their bookkeeping system is so limited, with his wife and him, that they find that their billing coming through one company is very easy to handle, and they're so happy with the Brown products that actually they would rather have them in their store anyway. So anything that can be maneuvered into Brown is so much easier in the bookkeeping. They like to do it that way. As to whether he has 85 percent of his inventory in Brown, he said, that would be pretty strong. They have house slippers that come from all over the country, tennis shoes, baseball shoes, bowling shoes, tap shoes, ballet shoes, and there's

at least 10 different departments that Brown don't even carry at all. He would say 70 percent would be closer.

The principal line of shoes in each of the three categories, men's, women's and children's, in his stores in East Los Angeles and Laguna Beach are a Brown line. He advertises that in his stores. He features their signs in front, and in the windows, of the type of shoe that it is. In other words, if it's a Freeman shoe, he puts a Freeman ticket on it. If it's a Brown shoe he puts a Brown shoe ticket on it. And the lines that are selling, why naturally he fills in, and those are the ones that will move. In the Laguna Store, Roblee is the principal shoe. He carries more of them than he does Freeman.

As to whether he has any lines conflicting with Brown lines that he carries in both of his stores, as to price, quality and style, the witness thinks that Freeman would conflict in price, and also in quality. There are none other than Freeman, except in the sandal lines and casual lines, [fol. 533] where he buys Porter sandals, and they would conflict with the Brown sandals. But he doesn't let that bother him. In those lines he buys as to pattern and Brown doesn't concentrate too greatly on sandals, so he goes into other companies that are specialists in that field and buys from them. He buys Evans, and also Porter sandals, and Brown sandals—for men. Brown is very weak in the sandal line, so he concentrates into Porters and into Evans sandals in place of that.

The witness does not get the full line of Freeman shoes. It would be impossible to carry a full line of Roblee and Pedwins and Freeman. He picks out the patterns he likes for that particular store and buys them accordingly, according to how they sell. It is possible then in the men's category to have several different brands of shoes if you pick out the style which you think you sell best. The witness could put in as many as he wishes, as many companies as he wished. As to whether that would give him the inventory problem that he mentioned would occur from not following line concentration theory in his stores, the witness said, well, the thing is the space. In other words, the inventory is determined as to how large a store is, and if you carry too many lines and your store isn't

large enough, well, then something has to go. So naturally he just keeps the lines that are the best sellers and the most adapted for that particular neighborhood.

The signs in his stores were not given to him by Brown Shoe Company. The signs that he has on the outside of the store, he paid for. He bought two of them originally and thinks they were \$33.00 apiece. Brown gave him price tickets for his shoes at no cost. The price ticket says Buster Brown or Naturalizer, or Life Stride on it, and Freeman gave him the same tickets. They gave him show cards for his window, and he can also purchase the neon signs from Freeman too. They have a service that he can buy the same as he bought from Brown. If he needed a neon sign with Freeman's name on it, they're available through the Freeman Company, and they send him advertisements on it all the time. The Brown signs are not neon, they're incandescent bulbs inside the signs. [fol. 534] The witness has never used a window trim service offered by Brown through the franchise program. He trims his own windows. He has used the architectural service provided on the franchise, for his Laguna Store. He wrote in and asked them to draw plans for the store, and sent them the measurements of the store, and practically 3 weeks later, they sent him architectural plans of their version of a shoe store. They have had a lot of experience in stores. He didn't use the complete plan, he used what he could use. The witness found it very convenient, and it solved a lot of problems for him that he couldn't have gotten any place else.

As to the 34 outlets in 6 blocks, 3 blocks on either side of him, he said, every type of shoe store you can think of is there. We have haberdashers that carry Stacy Adams, and Jarmans. In fact we have two Jarman outlets there, we have two Gallenkamp Shoe Stores—it's a terrific shoe street, and you really have to be on your toes to stay in business. I mean, if Brown shoes would not fill the bill in that store I'd kick them out so fast it would make your head swim, or I'd go broke tomorrow. If the witness found another line that would sell better, he said I'd put them in tomorrow. And I've tried a lot of different price bracket shoes in there, shoes that sell maybe fifty cents or one dollar less, and we have found absolutely failure with them. They

don't hold up, they don't fit, and they don't wear. And the Buster Brown, actually, with all that tremendous competition has made my store feasible. I've had Stride-Right, I've had Kalisteniks try to put their shoes in my store.

As to whether the witness feels an obligation towards Brown to buy their line, in return for the benefits and services that he receives under the Brown franchise program, even aside from the fact that they have good shoes, the witness said, appreciation of their tremendous service. I have been with International Shoe Company, and I have bought shoes from all over the United States, and it is a pleasure to do business with Brown because of their tremendous service. In ten days I have my baby shoes back on the wall ready for corrective fitting. And in our particular location in East Los Angeles we cannot fit a "C" [fol. 535] on a "D" foot. We don't do it, we don't practice it, and anybody that should do it in the store, why, I look down on them. So Brown to us is very important just from their service alone. As to whether he feels any obligation towards Brown to buy, beside the fact that they have a good shoe and they give him good service, the witness said, appreciation. Makes my job so much easier to work with them. I mean, they are a wonderful company. And there isn't anything that I get into trouble with or problems that I can't call my fieldman and we can work it out, and it makes my job so much easier.

Redirect examination.

The witness is absolutely not under any obligation to buy Brown shoes. He is free to buy any brand or line of shoes he wants. He controls his buying of shoes in keeping with what he described as a line concentration merchandising policy. In concentration and in putting in other lines, it's a financial situation. In other words, you have to have the money to pay for these shoes, and you must have room to put them in. Just to go out and buy a line of shoes because you like them, it wouldn't be permissible sometimes. You wouldn't have room for them, and you couldn't pay for them if you wanted to. That's a controlling element in the purchasing. There are mistakes being made in purchasing shoes that don't sell, and he gets overloaded in categories, so he must cut down some place. You just

can't say that you can go out and buy a line of Thoroughgood work shoes when you can't pay for them in thirty days. You've got to be able to handle situations as a businessman. The Brown franchise program does not compel him to do that. They have nothing to do with it. That's strictly an individual situation. In other words, these are factors that are inherent in his business.

[fol. 536] WILLIAM J. SEBASTIAN, called as a witness for the respondent, testified as follows:

Direct examination.

The witness lives in Santa Anna, California. He is a merchant and his business is a family shoe store. He is the owner of the store. Its name is Sebastian's Shoes, and it is located in Santa Anna. The population of Santa Anna is around 100,000. He does not know the population of the trade area that he would draw from. His shoe store is one of the oldest stores in Santa Anna, and he has been a Brown Shoe Company franchise since about 1926. The store itself opened back in 1906 or 1905. It was a department store then. About 45 years ago, it changed exclusively to shoes, around 1915 or 1916.

The witness does not have an interest in any other shoe stores. This was not his own store at the start. He was with his dad for quite a few years, and they worked as partners. He has been in shoe retailing since about 1926. In the department store he had some experience in small lines of shoes.

The Brown brands of shoes which he carries are, Roblee, Buster Brown, Air Step, Life Stride, Evans and Glamour Debs. He carries several other brands of shoes besides Brown brands. Those are Deb Shoe Company, Scooters, Edith Henry, and Selby Arch Preserver. Vogue Shoe Company makes the Scooters. As to whether he has carried other brands of shoes from time to time, that he hasn't named here, he doesn't remember any of them.

The Brown fieldman that visits his store is Val Kemp. He visits about 3 or 4 times a year. The witness has called on him to help with audits and invoicing, and then of

course he comes in when he is going through and visits with the witness. They discuss shoe merchandising. The witness makes out monthly reports. He uses the open-to-buy. He uses the Brown franchise program record system of accounting and inventory. He does not keep tab of the stocks of individual shoes. He does use their accounting forms.

[fol. 537] He did purchase group life insurance through the Brown program. He has never had occasion to compare the cost of that insurance with similar insurance he could purchase locally. He has been satisfied. He carries his business insurance through the Brown franchise program. He has never made a cost comparison on that insurance for what he could obtain it locally. The witness used the architectural services offered by Brown when he moved in about 1947. He has no idea what the cost of similar plans would run. He didn't check it. He was satisfied with the layout, and went ahead on it. He uses the window trim service. He has never obtained a loan from Brown Shoe Company. The window trim service is not free, it runs about \$50 a month, or about \$600 a year.

He purchases his canvas and rubber footwear from U. S. Rubber. He buys directly through the U. S. Rubber salesman. It's billed through Brown Shoe Company. He does not feel that as a Brown franchise dealer he gets a special price or any special terms on the merchandise. He just gets the good service, good line of shoes. He is sure he could get the same price and terms whether he was on the program or not on the program.

His store is a Brown franchise store because they have the merchandise he wanted, well advertised lines, and then too, he likes as few accounts as possible. The witness believes in concentrating the line. As to whether the program encourages this, the witness said, there was never anything brought up about it, but if they make the merchandise you like, you naturally will go right with them. He espouses line concentration because he thinks that's more profitable than spreading out with other lines. That's the way he feels. He has found that when you buy other lines, there is a lot of duplication. You can hardly help it. He does not think duplicating the same patterns of shoes, in the different brands, will increase sales.

Since he has been on the Brown franchise program, he has never been told by anyone connected with Brown that he could not carry an outside or conflicting line of shoes. [fol. 538] No one, to his knowledge, from Brown or connected with Brown, ever told him to get rid of an outside or conflicting line of shoes. No one from Brown ever told him that he must buy a certain line or lines of Brown shoes, none whatsoever. He does not have a written franchise agreement. He never did. As to what his understanding is as to when he may leave the franchise program, he said, I never had anything come up about it. I just feel that there is nothing binding, I can leave any time I want to. He does not feel that he has an obligation to Brown as a member of the Brown franchise program. He doesn't feel any obligation to them whatsoever.

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[fol. 539] A salesman from the Juvenile Shoe Company has never called upon the witness to sell him shoes. He has looked into Clinics and Lazy Bones, but he didn't consider them, because they didn't fit in his program. Clinics are carried in his town about two blocks down from him in a store named Newcomb's. Lazy Bones are not carried in his town, to his knowledge.

He does not know how long he has bought Deb shoes. When they first came out, they were a pretty good line of flats. That must have been around 1948 or 1947. He has carried them straight along ever since then. He has been dropping them though because the fit is not what he wants, and the patterns don't fit in as well as they did at the time when he started. No one from Brown Shoe Company has ever told him that he couldn't carry Debs. As to whether anyone from Brown ever urged him not to carry Debs, he said, nothing has ever come up. That has been left strictly to my discretion.

He has never been called on by a salesman from the Freeman Shoe Corporation. That line is carried right across the street from him. The name of the store is Vandermast. It is one of the larger men's clothing stores there. A sales representative of Weyenberg Shoe Corporation has never called on him. They are not carried in town. If Massagic and Port-a-ped are carried, they haven't

advertised them, so he wouldn't know. He hasn't heard of them. The witness has never heard of the Huth-James Shoe Company. He doesn't know anything about the Leverenz Shoe Company.

He would feel no hesitancy about buying an outside line if it appealed to him. If it fit into the picture of his business, he'd buy it with no hesitancy whatsoever. If it happened to conflict, as to whether he would feel any hesitancy then, the witness said, I don't know if I would be interested, if it conflicted, because I'm satisfied with what I have. His reason then, would not be because he is a Brown franchise dealer. He said, I wouldn't be concerned about that at all.

[fol. 540] Cross-examination.

He has never figured what percentage of his inventory is Brown, but he would presume it would be somewhere around 65 or 70 percent, somewhere in there.

LEROY C. SAMUELS, called as a witness for the respondent, testified as follows:

Direct examination.

His residence is in Encino, California. He is in the retail shoe business. He owns two shoe stores and is part owner of a third. The two shoe stores he owns are located at Compton and Sherman Oaks, California. The Sherman Oaks store is presently on the Brown franchise program. It went on the program approximately June of 1959, when he was planning to open the store. It hadn't been a shoe store before, it was an empty lot. The building was being constructed for that purpose.

The lines of shoes he carries in that store are, in women's lines, Naturalizers, Life Stride, Glamour Debs and also Varsity Vogues as a major line, which is a branch of Robin Hood. Then he has a few other lines which are not principal sources that he uses from time to time, such as Pierre, the local jobbers, Delmode. At this time of the year he has summer sandals, Italian imports, which will vary from time to time depending upon the source. Imports

would include Lujanos. In his men's lines he carries Florsheim, Roblee, Pedwin. In children's lines he is almost 100 per cent Buster Brown. He will, from time to time, supplement that with merchandise he feels is timely. His store has carried a few shoes in the children's line from Virginia Shoe Company. It does a wonderful job with Wolverine Shoe Company, which makes Hush Puppies.

As to canvas or rubber footwear, he carries rubber footwear primarily from U. S. Rubber and supplements it with Red Ball Jets and P. F.'s and Randolph Manufacturing. The merchandise which he purchases from U. S. Rubber compares sufficiently with his B. F. Goodrich or these other items to compare prices. They're all the same, except Randolph [fol. 541] dolph, which is not a competitive line. But the P. F.'s and the Jets and Keds are all comparable and competitive. They all offer the same price. In other words, if you buy the volume quantity you get the same price, the same discount. As far as the witness is concerned, it's absolutely uniform between those rubber companies. U. S. Rubber is invoiced through Brown Shoe Company. P. F.'s is a trade name, but it is distributed both through the Hood branches and the Goodrich branches. Manufactured by the same company. That would be Goodrich. P. F. stands for "Posture Foundation."

The witness carries his business insurance such as casualty insurance, in regard to his Sherman Oaks Store, with a local agency, with the exception of a small burglary policy which was obtained through the insurance offered by Brown Shoe Company. He buys his insurance locally because he has equal or better coverage for the same or less premium, plus the fact he likes local service.

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[fol. 542] As to whether the term "line concentration" has a meaning to him, he said, it's an advantage. I feel that if we have a principal line it's foolish to go into a competitive line for one or two items, because eventually you get more and more duplication, resulting in a greater inventory and more markdown, so that if the principal line has something that is comparable to competitive lines there is no reason for us to put it into the competitive line.

As a participant in the Brown franchise program at his

Sherman Oaks Store, he is in no way restricted in the lines of shoes that he may choose to buy. The lines he chooses to buy are determined solely by his own opinion as to their value, their worth, how they fit into his store, whether he feels that they are good or bad. If a Brown line that he may be carrying did not perform in accordance with the manner he thought it should, he would be under no restriction or restraint in discontinuing it.

His store at Sherman Oaks has an outside sign, a hanging vertical sign, which is approximately 15 feet high and 3 feet wide, white plexiglass with black letters, each letter approximately 8 to 10 inches in height, stating, "Florsheim," and when it is lit at night it stands out very brightly, it is predominant. Then on the face of the building, in letters that protrude from the building, is the name "Samuels," and adjacent to that is an animated Buster Brown neon sign, and on the top of the marquee, in a type of recessed box, are the names, "Naturalizer," "Pedwin," and "Buster Brown."

Florsheim is one of the lines he carries in men's shoes. It could conflict with Roblee's better shoes, that is, Roblee's top price would conflict with Florsheim. But as a matter of merchandising he puts it into the Florsheim line rather than the Roblee. He uses the Roblee line as an [fol. 543] in between price between the Florsheim and Pedwin, which are two bigger volume lines with him than Roblee. His Pedwin in the men's line is the big line in Brown shoes.

As to whether he bought the Florsheim sign, the witness said, this is one of those dollar-in-hand deals. He is told the sign is worth approximately \$1,000, \$1,200. He paid \$500 for the erection of it. He got the Buster Brown sign from the Buster Brown salesman. He did not buy that. He thinks the salesman was allocated one a year, he is not sure, and the salesman gave that one to him. He had to pay for the freight and the erection. The other names that appear as part of his Samuel Shoe Store sign, such as "Naturalizer," and one or two others, the witness paid for that himself.

At his Sherman Oaks store he has never carried Clinics or Lazy Bones shoes. A salesman has never called on him to try to sell him that brand of shoes. He has never tried to

buy Clinics for the Sherman Oaks store, but for the Compton store.

He has never had shoes manufactured by the Deb Shoe Company, in his Sherman Oaks store. A salesman has tried to sell him there. As to the reason he didn't buy, the witness said, my past experience with them, both in the store that I mentioned first that I have an interest in, and trying them out again in the Compton Store, I found as a whole as to the patterns I had—not for the line but for the patterns I had—they were poor-fitting patterns. Service was not 100 percent. As to whether being on the franchise program at his Sherman Oaks store had anything to do with his decision, the witness said, no. If that were the case, then I wouldn't have even looked at them. Nobody from Brown tells him what lines of shoes to carry. Being on the Brown franchise program, he is not restricted in what lines of shoes he carries.

A salesman from Weyenberg Shoes Corporation, has never called on him at Sherman Oaks. A salesman from Huth-James has never called on him in Sherman Oaks. As to whether the Leverenz Shoe Company salesman ever called on him at Sherman Oaks store, the witness said, as [fol. 544] I recall, he has stopped in there relating to the other store, but not as to the Sherman Oaks store, because we carried it in the Compton store, but have never had them in the other store.

The witness has owned the store in Compton for 6 years. Compton is approximately thirty-five miles from Sherman Oaks. In a broad sense, it would also be a suburb of Los Angeles. It lies actually halfway between Long Beach and Los Angeles. He acquired the Compton store 6 years ago this September, in 1955. There was a present competitor in that store that had vacated approximately a month before to move to a larger location. The witness moved into the vacated location. That store went on the franchise program, he thinks, approximately within 4 to 6 months after he opened. Sometime in 1957 he went off the franchise program.

Just prior to going off the franchise program at his Compton Store, he was carrying the following lines: in ladies' shoes, Air Step, a few Life Strides, Jacqueline, made by Wohl Shoe Company, quite a few of the local jobber's casuals or flats, and shoes from Pierre Shoe Com-

pany. Children's were almost all Buster Brown, with a few American Juniors carried over from his original opening. In men's shoes he had Freeman, Roblee, Pedwin and some shoes from Calumet and Leverenz. He thinks one of the last two is a boy's line. They are both the Leverenz Shoe Company. The same salesman sells them to him. Also, he had some shoes from Brooks.

At that time, the Compton store had Red Ball Jets canvas and rubber footwear. He also bought from U. S. Rubber, as a supplementary resource to Red Ball Jets. The manufacturer that makes Red Ball Jets is Mishawaka Rubber and Wool Manufacturing Company. As to whether there were items of merchandise that he bought from U. S. Rubber, comparable to the items he bought from Mishawaka at that time, the witness said, it was strictly supplementary. If he wasn't able to get it locally from the Red Ball Jet Warehouse and U. S. Keds had them on hand, he would get them on hand. The prices were the same. Originally in that store he had P. F.'s 100 percent, but because of local [fol. 545] price differences with the merchants it made it rather awkward if somebody was selling them for 20 cents more or 20 cents less, and they couldn't get together on the price, and rather than go into this problem—because what would happen, for example, if your wife would go in his store and want a particular item for \$4.00 that was \$4.95 and she could go elsewhere and see it for \$4.75 she would take the opinion that perhaps all of his shoes were overpriced. And one of the other stores used the U. S. Rubber products as a leader at sale time, promotions, and so forth.

The Red Ball Jets, no one had and he could take them and sell them and not worry about anybody using them as a leader or as a football item. So this is why he switched. Basically their prices are all competitive as far as the dealer buying from the resource, prices are identical.

When he said, "people getting together," that's in relation to the retailers in his area. The witness said, we would mention to the salesman that we felt that there was a price difference. And in a small town they try to give an exclusive. Now, one man would have P. F.'s by Hood, another one would have P. F.'s by Goodrich. They are under different sales management. You can't very well go to a competitive line and say, "Get this man in line." Now also understand that they are not allowed

to order a price fix. All they can do is suggest what prices they would like to recommend without holding a stick over them. If the man doesn't go along with it there is nothing they can do.

The witness didn't go off the franchise program at his Compton store, he was taken off. This was when he replaced Air Steps with Red Cross shoes. That was, he thinks, in 1957. When he replaced Air Step with Red Cross shoes, no representative of Brown Shoe Company, by threats or other means, attempted to compel him to retain Air Step and not go to Red Cross. Putting in Red Cross was strictly his own idea. The witness said, however, I advised Mr. Kemp, the fieldman, at the time, of my intentions, and I won't say that he said it officially, I had [fol. 546] the feeling that I was doing the wise thing. But he advised me that I couldn't stay on the franchise plan under those circumstances.

As to the circumstances that contributed to his decision to put in Red Cross, the witness said he was selling approximately ten pairs of Air Steps a month and he put in Red Cross, and eventually worked them in, and he went up to about 100 pair a month for the same type of merchandise. Red Cross had previously been sold in his community by a man who had gone out of business. The occasion for his obtaining the Red Cross line was coincident with that man's going out of business. The Red Cross line had not been available to him prior to that.

As to whether, in a town of his size, the fact that one store would have a particular line, had a bearing on whether he could obtain the line or would want to carry it, the witness said, this is a double question. Actually he doesn't think one would carry it except in lines like U. S. Keds, of this type, but when it comes to a brand name, such as Red Cross, he doesn't think that they would give it to two firms in the same town of that size, unless one was a department store and one was an independent operation.

When people think of women's shoes the name Red Cross is number one, just like when you think of men's shoes you think of Florsheim. And that's what contributed to his decision, in obtaining Red Cross. Red Cross, from a shoeman's standpoint, is a broad line of shoes. They cover a category from an elderly matron to a young adult without going to extreme shoes that are strictly high fash-

ion. And they go into casual types, such as wedgies and oxfords. They carry some shoes that can be worn on the young teenage girl as well. So, you're covering an age group from possibly ten to one hundred. This is broad coverage.

As to whether that Red Cross line is as broad as any women's line in the country, he said he can't think of very many competitive lines, except possibly Vitality in a small way, and in still a smaller way Naturalizer and [fol. 547] Air Step, these same types of shoes, Energetic. They are different categories as far as quality and so forth in customer acceptance, but competitive. The witness thinks there was a previous brand identity of Red Cross in his community and nationwide that contributed to his decision to purchase them. In fact he would venture to say that it's almost international, the name of Gold Cross and Red Cross. That was a very important factor that influenced his decision.

After he went off the program, as to the immediate effect on his business, the witness said, I don't think the program, and that is what you mean, affected my business at all. My business increased, but not because of the lack of the program, but because of the increase in our Red Cross shoes and the association that was not put with the store with a name that was more well known. We got the mother in, and she brought her children in, and they in turn brought dad in. In other words, from going off the program, from the standpoint of his business, the witness was not adversely affected financially. Red Cross is made by United States Shoe Corporation.

After he went off the program the witness continued to purchase the same lines of the other shoes that he mentioned, other than Air Step. In fact, his Life Stride line increased considerably at the expense of Wohl Shoe Company, when he eliminated his competitive children's line, the few he had of American Juniors. And he would say as a whole, everybody benefited because our business picked up. He continued to be a customer of Brown Shoe Company. No one from Brown in any way indicated reluctance to sell him Brown line shoes, whatsoever. They came around the same as before, and in fact, Mr. Kemp still stopped in, although he had no obligation to.

In regard to the rubber goods that he had bought, he

continued to purchase these rubber goods from the same sources after he went off the program as he did before. The program affected his purchases in no way, before or after. The same prices were charged, before and after. The witness said he might add one thing. The relay in [fol. 548] billing through Brown gave him a 10 day advantage as far as the Sherman Oaks store was concerned. That would be the only thing that he could think of in the way of different terms. This is not intentional in the way of price or delay in billing, just a matter of bookkeeping and mail.

He did not, at the Compton Store, suffer any economic loss as a result of being off the Brown franchise program. And his gross sales improved with the addition of the Red Cross.

In regard to the Compton store he was asked whether he had any experience with the Juvenile Shoe Corporation, either when he was on the program or afterward. He said, at one time he went into the sample room during a shoe show to see if he could get the nurse shoes, which is the Clinic branch of Juvenile. That was before he went on the program, because he didn't have a nurses' line at that time. It is really a women-in-white service shoe. The salesman told him he had an account in that town that he was satisfied with, and he was not looking for another account, and the witness didn't get it.

The witness has had experience with the Deb Shoe Company in his Compton Store. As he recalls, he bought Deb shoes while he was on the franchise plan. No one from Brown told him he could not buy Deb shoes. He found the shoes not to be 100 percent fitters. Their service as far as fill-in orders and original orders was slow. He actually lost money on disposing of the shoes because he could not get his normal markup for them and had to put them out on sale to get rid of them. He returned some shoes to them that they did take back because of these reasons. He thinks he tried Debs again in his Compton store after the salesman called on him and said the situation was improved, but he found the same thing to prevail, and he gave up on them, and that is why he hasn't bought them since. He looks at the line, but that's as far as it goes. He has a bad taste in his mouth for them. His decision in not buying Debs was not in any way related to the Brown franchise

program. As to whether he continues to be of the opinion that he doesn't desire to buy Deb shoes since he has been [fol. 549] off the program the witness said, we look at the line, because they are highly styled, I mean, as far as styling they have a lot of advantages that other firms don't have—but we don't buy them, because, as I say, we feel that the shoes—because of our past experience with them we are reluctant even to try them out again.

The witness has had a salesman from the Portage Division of Weyenberg Shoe Corporation call on him. He has never stocked their shoes because he felt he could use only one shoe out of the line, their cushion insole shoe, and for one shoe he didn't want to get into another line. It didn't mean that much to him. The witness is not sure whether he made that decision while he was on the program, or immediately before. Being on the program would not have had any influence on his decision, because he bought Freeman shoes at that time.

He thinks he had Freeman shoes almost from the inception of the store. He opened the store exclusively with Pedwin and then he decided to grade up a little bit and put in Freemans. He continued to carry Freemans at that store, in a small way, until he got a letter from them that they were no longer going to sell him, that there was a competitor in town who wanted the line and they had given it to him and they no longer could supply the witness. The salesman came in and picked up a sign that they had furnished to him free and gave it to the competitor. That was in 1960, he doesn't remember the month. No one from Brown Shoe Company made any attempt to compel the witness to discontinue Freeman shoes in his Compton Store while it was on the franchise program. Not other than a salesman calling on him, like any competitive line would come in to sell him. They wouldn't knock the line, they would just try to sell him their product. Nothing in the Brown franchise program prevented him from carrying Freeman.

The witness never carried any shoes from Huth-James. But in about 1958 there was a salesman in to see him on two different occasions, and he's almost positive he was from Huth-James. The salesman had some type of [fol. 550] a promotion with school shoes, tying in with the school colors, as a gimmick to get a start in the shoes. The

witness didn't buy them. He felt, for the one type of shoe, here again for one item that wasn't that hot, why get tied up with another line.

He bought shoes from the Leverenz Shoe Company. He bought spot shoes from them when they had shoes that were not available from other resources and their prices were more desirable. They had a shoe a few years back called the Grasshopper, which was a tongue that worked on a mechanical gadget up and down, shoe lock deal, and their price was a more competitive price than Brown Shoe Company, so he bought them from them. It was awfully close to the period he was on the Brown franchise program when he bought them. It could have been immediately at that time or immediately after. He doesn't remember. As to the factors that influenced his decision to buy the Leverenz shoe, he said, this was something that was most desirable at that time, something that everybody wanted. If you didn't have it you just lost business, and you had to have it. The witness does not still stock the Leverenz shoe. He discontinued it when the style died out and there was no need to carry that shoe any more. He had sufficient merchandise. They were popular in 1957, 1958. He bought them more than one season and discontinued them when the popularity died out. To the best of his knowledge, no one in Compton stocks the Leverenz shoe.

As to his Compton store, when he went off the Brown franchise program there was no difference in the prices charged by Brown Shoe Company for any of the products which he bought. There was no difference in the credit terms. They were the same as before. No one from Brown attempted to use the franchise program to influence his decision adversely against stocking Red Cross shoes. That was entirely his own decision.

As to whether he talked to the Brown man before he made his decision, the witness said, I casually mentioned to Val what I was going to do. This is a situation you have to realize, that Val and I—at least I put myself in the position, I had a lot of respect for Val's opinion, [fol. 551] and many times we would get into a discussion of a family type. Many times we agreed, and many times we disagreed. But with this sort of relationship you can talk

these things over, and this is the situation that happened. I don't recall the exact conversation that took place. The witness told him what he was going to do before he did it though. The witness said, I didn't ask him, I told him. Let's put it that way. Because this is something that—there was no advantage for me to keep on with the Air Step line when I could take a line like Red Cross. As to whether the fieldman told the witness he'd have to go off the plan, the witness said, I don't remember his words. He probably indicated so to me. This was followed up by a letter from Mr. Johnson that I no longer would be on the franchise plan since I put in Red Cross shoes. But the witness went on and put in Red Cross anyway. This was prior to his Sherman Oaks business venture.

In regard to his Compton Store, he had his own identification sign while he was on the franchise program, and he had a Buster Brown sign on the face of the store also, a small vertical sign. He thinks it was put up after he went off the franchise plan. In regard to his Compton Store, he did not have his insurance under the Brown franchise program. He handled that locally for the same reasons he gave in reference to the Sherman Oaks Store.

Cross-examination.

The witness has used the architectural service provided by the Brown franchise program once. He found it very beneficial. He has been offered the window trim service provided by the Brown franchise program. He doesn't use it. At the present time he would say approximately 80 percent of the inventory in his Sherman Oaks store is Brown.

The U. S. Rubber salesman suggested that he carry the U. S. Rubber brand of rubber and canvas footwear at his Sherman Oaks Store when he went on the franchise program in 1959. The salesman was not accompanied by the Brown fieldman. As to what advantages, if any, [fol. 552] the salesman told the witness there would be in having the U. S. Rubber products billed through Brown, the witness said, he didn't. The reason we took on U. S. Rubber, my mind was made up beforehand to use U. S. Keds, because the "Keds" is synonymous with canvas footwear. People would come in and ask for a pair of Keds, they don't

necessarily mean U. S. Keds, they mean a pair of canvas shoes, because Keds is synonymous with canvas shoes, and it's the easier thing to sell. The salesman did not say anything that made him think that it would be more advantageous to him to have them billed through Brown rather than by U. S. Rubber. They did this on their own. He doesn't know why they did that. As to whether the witness started getting U. S. rubber and canvas footwear at the Sherman Oaks store before he went on the franchise program, he said, the Sherman Oaks Store from its inception was on the Brown franchise plan. Before the building was up he had made arrangements.

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[fol. 553] Q. Have you ever signed a Brown franchise dealer contract?

A. Yes. I have.

Q. Did you sign one on both of your stores?

A. Yes.

Q. Now, you stated that you felt that you were not restricted as to what shoes you might carry by being on the Brown franchise program, isn't that correct?

A. Oh, I reaffirm that very definitely.

Q. Well, do you see any conflict between your statement there and the language of the Brown franchise dealer contract, which states that you promise to concentrate on Brown shoes and to have no conflicting lines?

A. I think your question, the way it is put, is not a fair one to me. The way it's stated there, I feel that I have the right to choose whatever I want. They stated in the agreement there that—I don't—you probably have a copy up there exactly how the thing is worded—they had no time said anything to me about these lines. For example, the Life Stride and the Jacqueline are as competitive as can be.

Hearing Examiner Creel: They did say something to you about the Red Cross line.

The Witness: Pardon?

Hearing Examiner Creel: They did say something to you when you took the Red Cross line, didn't they?

The Witness: They told me I could no longer be on it.

By Mr. Timony:

Q. Could you put Red Cross into your Sherman Oaks Store if you had the opportunity?

A. I don't know. I don't think so.

Q. Why?

A. Well, I would say that the Red Cross line and the Naturalizer line are pretty much even right now as far as customer acceptance is concerned. The Naturalizer line was not available in Compton when I replaced the Air Step line. If I were to open up more stores I would want to, for merchandising purposes, stick to the same lines I [fol. 554] have, and I feel would be safer in taking the Naturalizer line than I would the Red Cross; because the Red Cross people have, for example, a policy out here, they give the May Company a 10-mile radius protection, so any new store opening up within a 10-mile radius of the May Company can not get Red Cross shoes. So actually I would be hurting myself for future stores.

The witness could not get the Naturalizer brand in Compton because it was taken by another store. In other words, it was already placed in the town. He doesn't know whether he would have taken it in preference to Red Cross if they had both been available. The other store still has Naturalizers. It is not a Brown franchise dealer. Volume-wise they are in the same bracket as the witness is in.

Redirect examination.

The witness had made the decision to put in Red Cross before he talked to Mr. Kemp. Mr. Kemp in no way attempted to use the Brown franchise agreement in an attempt to dissuade him from that decision. As to whether Mr. Kemp made any reference to it in any manner, the witness said, it's been a long time, but as near as he can recall, an informal statement that he probably wouldn't be on the franchise program if he put in the Red Cross shoes. He doesn't like to make this a definite statement, because it's been so long. He had already made up his mind. The line had already been arranged for. In fact, the line had been arranged for 6 months prior to it actually going in. The witness thereafter eliminated the Air Step line gradually, by merchandising them out. He stopped purchases for replacements.

Q. Did the fact that you might go off the program as was suggested in any way dissuade you from your decision to stock Red Cross?

A. No. No, the decision had already been made.

Q. In other words, it was the desirability of having that line in your store?

A. That's right.

[fol. 555] Recross-examination.

The witness found the advice of Mr. Kemp, the Brown fieldman, very beneficial and helpful to him. As to why he didn't confer with Mr. Kemp prior to taking that rather drastic step in putting in a brand new line, the witness said, I have been selling shoes for 30 years, with the exception of some time in the Service, and there are certain things, that, for example, you as an attorney know to be better than other things, and this is one of them, I mean. In fact, you wouldn't have to be in the shoe business very long to realize, you're only selling 10 pair a month of a certain product, that any change would be better, and here you're getting the most accepted line, or one of the two most accepted lines in the country. Now, I don't think this is anything that you would discuss with Val. In merchandising, no two problems are alike, what is good in this corner is not good in that corner, and all you can do is converse with someone like a fieldman to get his opinion if you're in doubt and get a cross-section. Actually what you do by talking it over is analyze them and getting another person's opinion and get the best results. Certain things are facts, there is no getting away from them.

As to whether he took into consideration that he was going to lose this very helpful advice of Mr. Kemp in his Compton store when he took on Red Cross, the witness said, actually I didn't lose the advice of Mr. Kemp. I may not have it officially, I don't know what his instructions were. I never lost it. Mr. Kemp still came to my store, we still conversed. There were times I talked to him about locations in the interim. I never even considered that a factor.

Further Redirect examination.

The possibility of installing a store at Sherman Oaks had not materialized at the time he went off the program in 1957. This was a subsequent decision.

[fol. 556] EDWARD FUHRMANN, JR., called as a witness for the Respondent, testified as follows:

Direct examination.

The witness lives at Long Beach, California. He is a shoe store retailer. He is part owner and manager of Fuhrmann's Lynwood Bootery, located in Lynwood, California. The approximate population of Lynwood is 30,000, and the approximate population of the trade area from which that store draws would be possibly 50,000 to 60,000. In the immediate vicinity, there are other shoe outlets, including Kirby's, Hudson's, a juvenile shoe store besides his own, and a men's shoe store which does a very large business in men's shoes and related footwear. A little farther away is a Sears, Gallenkamp's and Thom McAn, and in the other direction, a store called Mel's, which is a clothing store and has a leased shoe department, and another clothing store which has a leased shoe department. All of these stores are within three-quarters of a mile. Then going out to the outer fringes, he overlaps a little bit with some stores in Compton, which would be Kerr's, Samuels', Jack's, Beetler's, and perhaps another 10 in that area. Thus, in total there be roughly 25 to 30 shoe outlets in the trade area he thinks he draws from.

His parents started this store in 1934. He worked in the store while going to school, Saturdays, summers and so forth. He was away at the university for a number of years and was away from the business at that time and was in the "Service" for 4 years. Aside from that, he worked off and on. Then he went back into the business on a full time basis around 1946 or 1947. He and his wife went into business on a full-time basis and continued from there.

His parents opened a new store originally. This store

is on the Brown franchise program. He believes that it joined the program in 1955. Neither the witness nor his parents have any interest in any other shoe store.

The witness is a college graduate and is teaching a course at Compton College in retail store operation and management during the fall semester, each fall.

[fol. 557] He carries the following Brown brands in his shoe store: Roblee, Pedwin, Buster Brown, Air Step, Life Stride and Smart Aire. He used to carry Robin Hood, but not anymore. He also carries Glamour Debs, it comes out of the same division. Outside of these Brown brands, he carries in men's: Florsheim, Hush Puppies, and in women's Sbicca, California Cobblers, Delmar, Hollywood Scooters, and off and on he would carry a brand and then discontinue it. He is thinking of the primary ones, which are all he can think of offhand. He also carries Clinics. In connection with the Florsheim's men's shoes, that is a key item in his operation. As a matter of fact, even with the higher prices, he sells more Florsheims than he does in the next price range lower than that.

Mr. Kemp is the Brown field man that visits his store. He visits the store 2 or 3 times a year. The witness makes out monthly reports and the open-to-buy. He uses the record system of the Brown franchise program primarily, but also uses a double entry system in addition to that. This is his own modification. He does the Brown monthly report and then transforms from that into a different system because he likes to look at it both ways. He uses some of the life insurance available through the Brown franchise program, but not all of it. He has a life insurance policy and a liability policy, and also fire and property damage policies. In reference to life insurance, the witness has just one policy, which is on him. It is actually paid by his mother to buy out his interest in the business in case he should die. In other words, to pay his wife. He does carry fire insurance through the Brown franchise program, but plate glass insurance he carries through a different insurance agency.

Several years ago he had occasion to compare the cost of the fire and extended coverage that he buys through the Brown franchise program, with that which he could obtain locally. He had gone on the franchise program for a num-

ber of years, and he reinvestigated his insurance set-up, and he compared prices and found that there is a certain amount of savings with the Brown set-up and for that reason he changed to it. He is unable to remember exactly what the savings amounted to, but it was enough [fol. 558] to make the change. He didn't know how much. He would say it was less than \$100.

As to his use of the architectural services that Brown offers, he thinks that the first year they went on the program they were thinking of a little remodeling, and he wrote to the franchise division, or to someone, and they sent him some ideas and a plan. As it turned out he never used it, but he did ask for the service and received it. He got a blueprint. He sent them the dimensions of the store, and they sent a blueprint back suggesting changes in the arrangement. He has never had occasion to get a value on this type of service or compare the cost with what he could obtain locally. He wouldn't think of the cost, because he has used this type of thing from other sources and never does pay. He figures that if someone is going to sell him something, like hardware fittings or paint he expects them to give him advice. He is not going to pay them for advice. They can give him advice and that's part of the service. To his knowledge that type of service is available from fixture suppliers. He has used it in the last year or a year and a half. He does not know whether that type of service is available from other shoe manufacturers.

The witness carries canvas and rubber footwear. His primary supplier is Hood Rubber Company. He's been with them for many years and likes their products. That's B. F. Goodrich Company, Hood Division. He use to carry some U. S. Rubber products, and then less and less, and he thinks within the last year probably none. No one from Brown ever attempted to coerce him into buying U. S. Rubber products. He has no occasion or reason to believe that if he purchased canvas and rubber footwear from the U. S. Rubber Company through the Brown franchise program, or as a dealer on the franchise program, that he would get a better price. The only thing that he would think of, was that the invoicing would be the same as Brown invoices. But the discount is the same, so he

sees no particular advantage. He never did see an advantage.

No one from Brown has even told him in connection with the franchise program that he couldn't carry an outside [fol. 559] or conflicting line of shoes. This had never occurred. No one connected with Brown has ever asked him to stop carrying an outside or conflicting line of shoes. And no one from Brown ever told him that he must carry any certain Brown line or Brown brand of shoes. Not when you use the word "must". The salesman always tries to sell him merchandise and that comes from any company.

Q. Do you know whether you have a written franchise agreement?

A. Yes, I have.

Q. Have you had occasion to refer to that in the last several years or any time since you've had it?

A. I haven't looked at it since I signed it. As a matter of fact, my father was still in the business at the time we signed that, and we were in a four-way partnership, my mother and my father and my wife and myself, and I think my father then and I signed the agreement at that particular time, and he's been out of the business for a number of years and I haven't had occasion to look at it.

Q. What, if anything does the written agreement mean to you?

A. Well, to me it means the relationship between Brown Shoe Company and us, that we try to help each other as much as possible, and otherwise nothing.

Q. Has anyone from Brown Shoe Company ever pointed out any place in the written contract where you should not buy outside lines and attempted thereby to discourage you from buying outside lines of shoes?

A. No.

Q. Never since you've had it?

A. Never.

The term "line concentration" is meaningful to the witness in connection with shoe retailing in the sense that if it is properly used it can make a more profitable business. He thinks there is such a thing as overdoing it, too. The witness said, the more time you can concentrate on buy-

ing a smaller variety of brand shoes, from the buying standpoint, the more you can concentrate on that the better job you can do. This is brand emphasis. The same thing applies to it from the standpoint of relationship with the customers. The less brands you have, number of brands [fol. 560] you have to promote to the customers, the more you can concentrate on those particular brands, and the more impact you will have. And then it becomes an easier bookkeeping problem, I believe, if you have less companies to deal with. The way it is, I have mentioned a number of different companies and just in the mere mechanics of computing discounts on invoices, it doesn't make any difference whether you're computing the discount on a \$500 invoice or a \$30 invoice, the amount of work is the same, you still have the check to write, the amount of time involved is the same, except the more resources you're using the more time consuming the bookkeeping, and so on.

The witness does not think that additional brands of the same basic types of shoes, same patterns and same price category would normally increase his sales. Not unless there was a very unusual situation where a particular specific pattern had been widely promoted, due to national advertising or something. This would strictly be an exception he would say, normally not. There is no question about the fact that additional brands with the same patterns as he already has and in the same price category would give him additional inventory problems. The theory is that the more sales you can make on the smaller inventory the higher your profit will be, all other things being equal. As to whether there is a limit to the number of shoes that he can normally take into inventory at any given time, he said, only in the sense that he figures as merchandise budget and tries to stay within it. If he goes outside that budget his mother, who is still a partner in the business, will object that he has spent too much money and overdrawn the budget, and she will make him justify why he increased the inventory.

Regarding the factors that normally determine the amount of inventory that he would carry at any given time, the witness said, start with estimated sales, and reduce it to cost, and take into consideration the amount

of times turn you expect to get on the basis of past experience, and that would be different with different types of shoes and different categories, and that would determine what your average inventory should be. The witness was asked taking into consideration inventory limitations, [fol. 561] whether it was more important to have additional brands, duplicating patterns and categories of shoes in the same price, or to have additional sizes in brand concentration. The witness answered, if you assume, as he is willing to, that generally you carry the best selling pattern in the best selling brand and in the best selling price range, then it is far better to concentrate just in that one item. You have less money invested in inventory and a greater potential turnover, which should increase your profit.

As to the times the witness tends to operate as an exception to his belief in line concentration, he said the exceptions sometimes might or might not be the difference between a profitable and non-profitable operation too, because the shoe business is so highly fashion conscious these days in the first place that one line of shoes can be very strong in 80 or 90 per cent of the patterns and very weak as far as public acceptance is concerned in a small part of that. It might be that a competitor on that one-tenth or one-twentieth of the line might have a pattern that will far outsell it, and as far as I'm concerned this is the exception to line concentration. You don't carry the line in all of its strong and its weak points if you're going to be a smart dealer and make money, I think. Because after all, I'm in business to make money for Fuhrmann's Shoe Store and not for any shoe company or manufacturer. Where the exception is on that five or ten per cent, if someone has a pattern that the public wants or that I think the public will buy, I don't believe there should be any restraint on me, I should go out and buy that pattern from another company. This is the way I feel about it, and this is the way we do.

He thinks it's good business to concentrate with a single brand line of shoes in a certain price category if it supplies his needs adequately, and then, wherever he feels there is a weakness, then go out and try to find something to fill the weakness.

Q. You mentioned that you didn't think you should be restrained from buying any shoes whatsoever. Are you restrained at all?

A. No.

[fols. 562-563] Q. As a member of the franchise program?

A. No.

Q. In any way, shape whatsoever?

A. No.

Q. You feel completely free?

A. Oh, yes, yes.

Reference was made to the fact that the witness teaches a course in retailing. These principles of line concentration that he has been describing are generally accepted throughout the shoe retailing business. Last fall was the first semester that he gave the course and he is ready to repeat it the first time. He expects that this fall 60 per cent of his students will be sales people, stock clerks, assistant managers, and so on, from various retail organizations, and perhaps the other 30 or 40 per cent will be undergraduate students of freshman and sophomore level in college. Because there are courses available for large retail organizations this course is mainly adapted toward smaller retail organizations. So what he's talking about to these students is not shoe stores but women's clothing stores, hardware stores, jewelry stores, and he tries to teach it in such a way that if there is a common denominator of principles involved in merchandising, that's the way he tries to operate. And he would say, generally speaking, that the principles of line concentration, with the limitations and the exceptions he has mentioned, are good business practice, whether it happens to be in reference to a jewelry store, or women's clothing store, or something else. He definitely believes that this principle applies throughout the shoe retailing industry.

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[fol. 564] The witness carries Clinics. Just as a matter of interest he checked the other day the number of Clinics he [fol. 565] buys in any given year. He pulled out a 1960 file and made a count as to about 4 patterns of nurses' outfits only, that he used last year, and that amounted to a

little over 350 pairs, just those four patterns. This year it will be higher, because he is selling more and they've added another real hot pattern now that's going very well.

He buys Lazy Bones Juniors children's shoes when he feels that they have something he needs. He did last year. As a matter of fact, they had one particular pattern that he bought quite a lot of. Brown Shoe Company has never objected to his buying from Juvenile Shoe Company. They have never attempted to discourage it in any manner. He does not buy more Lazy Bones shoes because generally speaking the Buster Browns sell better, but once in a while he feels that Buster Brown doesn't have it in a certain type of pattern, and if Lazy Bones or somebody else has it better he feels that that's where they ought to go.

He has not purchased any shoes from the Deb Shoe Company recently. He thinks the last purchase from them might have been as long as 6 or 7 years ago. Prior to that for a number of years he was a constant purchaser from Deb. He honestly doesn't know whether he stopped doing business with Deb before or after he went on the franchise program. He stopped doing business with Deb because there was a period of about the last year when the merchandise kept getting worse and worse, and finally the last straw was when he got a shipment of 72 pairs, and they were really awful. He told Deb to take them back and they didn't, so that was it. He said, "No more." The shoes looked like a lot of seconds that somehow slipped by an inspector. The lasts were crooked, the toes were crooked, there were wrinkles, and where the front part of the vamp is pulled over there were notches and nicks in the sole edgings. These were the saddest looking shoes you ever saw—getting pretty bad.

The company did not take the shoes back when he asked them to at first. Because this was sort of the last straw, so to speak. There had been a number of poor shoes which had come in, some of which he had sent back, maybe one [fol. 566] pair at a time, which Deb accepted, and others they had to mark down to get rid of. They did not take them back and he still had the invoice, which was unpaid. A friend of his is an attorney and he asked him how he would stand on this thing if he got a couple of witnesses who were shoe men to take a look at the shoes, so that they

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could also testify that they were very poorly made, and the attorney said all right, so he went ahead and had the witnesses look at the shoes, and then he told Deb Shoe Company that the shoes were theirs and he was not going to pay the invoice. They dunned him a couple of times for the invoice and threatened to report it to Dun and Bradstreet, as a poor credit risk, which of course he doesn't like, he likes to maintain a good credit rating, but eventually the salesman came around and picked up the shoes.

For a number of years he carried shoes made by the Freeman Shoe Company. He does not still carry them. He fought a losing battle as far as sales were concerned in the Freeman line. His folks put them in long before the war, it might have been 1936 or 1937. They did fair with them after the war, and the sales did not improve, in fact they went down a little bit in proportion to some of the others, so finally, although they were always convinced that Freeman was a very finely made shoe, they could not convince enough customers of it. He would say, "This is a Freeman" and the customer would say "What's that?" And when you get too many of them who say "What's that?", then it's time to change brands as far as he's concerned. At the time that he discontinued Freemans, his had been the only store in that immediate area carrying them. When he discontinued, one of the large clothing stores took over the line. No one from Brown objected to his carrying Freeman shoes. No one from Brown objected to his carrying Deb shoes. And, no one from Brown tried to persuade him, as a part of either coming on the franchise program or staying on the program, that he must get rid of Deb or Freeman shoes.

In regard to how well Freeman Corporation aided him as a dealer in merchandising its brand shoes, the witness [fol. 567] said he thought that that was the main problem. Whether that is true in other locations he did not know, but one of the brands he put in to replace Freeman was Florsheim and the two were just exactly at opposite poles. With Freeman he had but relatively little promotional aids or relatively little push to help them obtain brand acceptance and that was true not only of his store, but in his personal opinion it was true all over Southern California. By contrast, Florsheim, which is a very fine shoe, had

customer acceptance, and the reason they have customer acceptance is that they go out and push the line. They help advertising. They help with the interior window trims, some of which they charge the dealer for and some of which they don't. They do not give cooperative advertising. The witness meant interior advertising, display set-ups and so forth. The minor ones are free of charge, the major ones they charge for. They advertise nationally in magazines. The whole thing that goes with national brand acceptance, every way you can imagine, that's right where they're pushing all the time. He has one small sign from Florsheim Company on the outside now, and he has another going up in about a month. The new one coming in is 15 feet high and 15 inches wide. It's one of the new type plastic signs and it will say "Florsheim Shoes". It's going to replace a present sign, a neon sign that he has. Florsheim is paying for the sign. They are loaning it to them in other words. The agreement he signed with Florsheim was that they will not charge him for the sign, and if at any time he stops carrying Florsheim Shoes then they want it understood that the sign belongs to them and that they can take it back. He pays for the installation only. He judges the value of the sign itself of around \$1,200 roughly. That has not been confirmed by a representative from Florsheim. He just looked around to get ideas as to roughly how much it was worth.

Occasionally he has signs from the Brown Shoe Company, but not outdoor signs, but interior signs, sometimes two feet by one and one-half, not neon signs. These are supplied by the separate brand division of Brown. He would say that he expects interior signs of that type from any [fol. 568] brand of shoes he carries, whether it's Evans slippers or Daniel Green. None of these signs have been given to him in connection with the franchise program as far as he recalls. Nobody tied it in with the program.

The witness carried Weyenberg Port-O-Ped for about a year, some years ago. Although he thought it would be a good selling shoe, he tried it for a year and it didn't sell well, so he discontinued it. He does not know what type of outlets sell the Weyenberg brand in Southern California. He does not recall any salesman from Huth-James calling upon him. He is not acquainted with the

man. Their brand names, Sno-Go, Sturdy Styles, Throw-aways and Little Troopers are not familiar to the witness. Leverenz Shoe Company, which makes Calumet and Lake Line, is not familiar either.

Q. As a Brown franchise dealer do you feel that you have any obligation to the Brown Shoe Company in return for being on the program?

A. No, not in that respect. Only the 30-day invoices I owe them, like I owe everybody else.

Q. I'm not referring to that, I'm referring to any——

A. You mean any obligation that I——

Q. To buy Brown shoes, or to buy a certain amount of Brown shoes.

A. No, I don't feel that way. Definitely.

The witness is teaching his course at Compton College, Compton, California. It is a college credit course carrying three units of university credit, lower division credit. He has a California teacher's credential, general secretary, which is required to teach the course.

Cross-examination.

The witness testified that he felt no obligation to buy Brown shoes because he is on the Brown franchise program, and that he was not restrained in any way, shape or form by being on the Brown franchise program, and also, that he signed a Brown franchise contract. He is sure that he read the contract at the time he signed it. He did not recall reading a provision where he promised [fol. 569] that he would concentrate on Brown lines and would have no lines conflicting with Brown. He hasn't read it since he signed it, and he imagines there is something there. At the time he signed the agreement he was already carrying, he thinks, 5 brands of Brown Shoe Company, and the Brown franchise man said, "You're already carrying 5 brands of Brown Shoe without being a member of the franchise program, so why don't you sign the agreement" and he did.

Q. But you do feel obligated, don't you, to buy Brown shoes because you're getting these benefits and services under the Brown franchise program?

A. No, I wouldn't say that. I would look at it this way.

I think, I vaguely recall, and one of the reasons I signed it—I'm sure there is a cancellation clause in there that either of us can cancel it without reason. I'm sure there is some type of a thing in there. But the way I feel about it is this: I deal with the Brown Shoe Company Brands because I think they're doing a good job for me, and I make my living at this. If I didn't I wouldn't carry them; and if at any time I feel that they are not doing the job for me I would feel free to drop the line, or drop the whole program. And I feel that Brown Shoe Company is probably the same way, if at any time they don't like the way I'm doing business, why, they probably would cancel also.

I happen to be a pretty independent sort of person, and my father was pretty much the same way, and we have a very decided feeling that we like to run that business, because it's our money and we're the ones that have to pay the bills, and that's it, and we don't like too much other people telling us how to do it. That's the general philosophy anyhow that we use in operating this business.

Hearing Examiner Creel: But you carry out your agreements, don't you?

The Witness: I would say this, generally speaking. My agreement with them, as I understand it, was that I'm more or less concentrating on Brown brands because I think they're going to do a good job for me. And I do. I concentrate pretty much on Brown brands.

[fol. 570] I just believe that if I should go out and buy a pattern here and there from somebody else, I think I should do that, too. I concentrate pretty much on Brown, yes.

Some of his patterns or lines other than Brown conflict with Brown lines, in certain cases, in that sense that the patterns duplicate each other in the same price range for example. A very good example is Clinics. He sells a lot of Air Steps, and Air Step has a certain group of patterns which look almost exactly like the same patterns that he carries in Clinics and they're in the same price range. He carries the Clinics because the name is better and they are more saleable and the Air Step salesman feels the same way about it he's sure. In this particular case it would not be an inventory problem in the sense that he has, say, 5 patterns he's buying here in a group, from one company,

that otherwise he'd be buying maybe from Brown. His total inventory picture would be the same. True, he's dealing with another company, which causes a little extra book work and so on, but he feels that this is more than going to make up for that, because he's going to sell more Clinics in this case than he would otherwise. He doesn't order the same shoes from Brown, the conflicting shoes.

Redirect examination.

The witness does not buy Brown brand lines in order to carry out his franchise agreement. He buys Brown brand lines because he thinks they are the ones that will sell. If there comes a day when he doesn't think those are the ones that will sell, there is no question about it, then he will buy something else.

ARPAD LAZAR, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness is in the retail shoe business. He owns a store which is located at 10766 West Pica Boulevard in the [fol. 571] city of Los Angeles. He opened that store in 1950. It was opened as a new store and it is under his management and direction. The store is presently on the Brown franchise program, and it has been from the very beginning. The Brown brand shoes which he carries are Naturalizers, Life Strides, Smartaires, in women's shoes; Buster Brown for children; Glamour Deb for teenagers; Roblee for men; Pedwin for young men. Outside lines he carries from the Vogue Shoe Company, the Hollywood Scooter brand; also some teenager flats from Kismet and Busken. It is very seldom that he deviates in the types or brands of shoes that he carries. He doesn't find the need for it.

No one from Brown Shoe Company has ever attempted to tell him what lines he should carry or what lines he should not carry.

The witness buys some canvas and rubber footwear from two sources, the United States Rubber Company is one and a local agent of the Bristol Manufacturing Company the

other. He has no knowledge as to whether he receives a better price from U. S. Rubber Company by virtue of being on the Brown franchise program. Some special purchases come through direct from U. S. Rubber. As to why he has it billed through Brown, the witness said, because that's the way he started and it was convenient. Besides, there are restrictions that U. S. Rubber Company puts on seasonal buying, that he has to buy 40 dozen shoes at once for the spring season. It is possible to buy them—and he does not know whether this is due to the franchise plan or not—it is possible to buy them in 12-pair lots and still get his trade discount, which is an 8 percent special allowance on such purchases after the original buy is made. He is talking about fill-in orders.

The witness determines what lines of shoes he stocks in his store. As to the basis for such determination, he said, at the shoe shows he looks over some competitive lines, but he relies on the brands he has introduced, and it took quite a time to introduce them even though they were well known brands. In his neighborhood he has to introduce them himself. After he looks through to make sure that he is still on the right track, he will go back to his [fol. 572] original lines and make his selections on the basis of what he has seen. In making that inspection or survey, as he mentioned, he feels absolutely free to select whatever lines he might choose. He feels no restriction because of his being on the Brown franchise program that would prevent him from doing that.

The witness has a policy in the operation of his store as to whether or not to buy shoes that are in stock versus makeup shoes. It is his most important factor, because he is not large enough to back up his orders in sufficient quantities from the very beginning, and would not be able to have a selection of styles if he were forced to make, at the very beginning, large purchases in all the shoes he is buying. Without the possibility of filling in the sold pairs from stock he would be almost incapable of operating. He follows the practice of mail orders for fill-in. That would not be possible to do that with a shoe that is on a makeup basis. But it is possible on in-stock shoes. This is the most important factor bearing on the fact that he buys Brown shoes, besides the fact that the brands are well accepted. With some of the outside sources he has to rely almost ex-

clusively on the original purchase, because there are some restrictions on their selling. They will sell only 6 pairs to a width. He buys shoes in at least 3 widths, especially women's and girls' shoes, so that would mean a quantity of at least 18 pairs, in reality a minimum of 24 pairs, and still have an unbalanced stock. This problem has come up quite often, and when it comes to refills he is stymied, because most of the time he has to eliminate the possibility of fitting and just take what's coming in, through the most frequently asked for sizes, and these things have full bearing on the operation of the store. This is one of the important criteria he uses in making determinations as to the brands he buys. Even from Brown Shoe Company he will buy shoes that are in stock and will avoid buying makeup shoes.

The term "line concentration" means something to the witness, in the shoe business. He said, take the Naturalizer shoe. They are women's shoes, and they cover a long range of styles in heels and in looks of lasts. He [fol. 573] could almost manage the whole business with this line of women's shoes, and concentration on this line alone probably would do him more good than branching out into too many other shoes. To this extent from the franchise division of the Brown Shoe Company he has received very good advice, urging him not to buy too many lines, not even from the Brown Shoe Company. He well remembers a circular letter that stated, "Too many lines from the Brown Shoe Company will also do harm to you, so don't buy them all, buy just the ones that you feel are the best for you." He has been trying to follow that policy as much as possible, but being in the Los Angeles area he is faced with so much competition that even to the detriment of his own policies, he has to take such steps which are not absolutely correct. He means that he buys shoes which he knows he should not buy, because they are in style. In other words, he does branch out and buy other shoes. No one from Brown has ever made any attempt to prevent him from doing that. It is his decision.

The witness' store is located in the metropolitan Los Angeles area in a suburban shopping center.

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[fol. 574] The witness has never stocked any Juvenile Corporation shoes, Clinics or Lazy Bones. As he remembers the salesman from Lazy Bones was in the store once, but he did not buy them because the shoe is just about a \$1.00 below Buster Brown, and he said to the salesman that if he ever bought another child's line it would be above Buster Brown and not below. That was the witness' merchandising policy. Being on the Brown franchise program had nothing to do with his decision.

He has been called on by a salesman from the Deb Shoe Company, but he has never purchased them. He did not purchase them because they were a specific group of shoes and his investigation showed him, that they did not meet the quality demands which he has. He wanted shoes of better quality that would stand up and not bring discontent among his customers. His being on the Brown program had nothing whatsoever to do with his not buying the Deb Shoes.

He is not sure whether or not a salesman from Freeman shoes ever called on him. He knows there was a man in from Weyenberg, and the answer to him was that the witness' men's shoe business was lagging, and if he ever put in men's shoes, he would not buy a shoe that is in the same bracket that Roblee is, he would buy a shoe which is far above it. And he was thinking of Florsheim shoes, which are represented in many of the stores of similar operations to his. The fact that he was on the Brown franchise program did not have anything to do with his decision not to buy Weyenberg shoes.

[fol. 575] He does not recall whether a salesman from the Huth-James Shoe Company ever called on him. To his knowledge, a salesman from Leverenz Shoe Company, who sells Calumet or Lake Line shoes, has never called on him.

If any of the Brown brand shoes which he presently carried did not perform and sell well, he would have no reluctance to change to another brand. And the fact that he is on the Brown franchise program in no way restricts him from exercising his independent judgment in that respect.

Cross-examination.

The witness would say that 60 to 70 percent of his inventory is in Brown shoes at the present time. That's

in numbers of shoes. He went on the Brown franchise program when he opened his store, in 1950. At that time he did not sign a Brown franchise agreement and didn't even know the existence of such an agreement.

There are two different kinds of window trim service offered by the Brown Shoe Company. One is the window trim service for which there is a fee charged, which he never bought. The other is one which comes down in seasonal display material, most of the time free, or for a very small charge. It is given by the divisions. He does not think the franchise program has anything to do with it. The franchise program has the window trim, as he remembers, but he never bought it. As to whether he ever had occasion to use the architectural services provided through Brown franchise, at the very beginning he asked Brown to give him advice on how to set up the store, but he was pressed for time and never took advantage of it.

The witness had a loan from the Brown Shoe Company, in about 1953. He decided to take on a new line from Brown, and he could not finance it himself, and he asked for a loan and received a loan of \$3,000. That is the only one he has had. The witness uses the insurance provided through the Brown franchise program.

Q. Now, for these services and benefits that you receive through the Brown franchise, would you tell us your conception of what your obligation is towards Brown?

A. Well, there is no obligation whatsoever. The only thing that we are furnishing the Brown Shoe Company for, you know, is—might be considered as a service from our part, but I think we are serving our own purpose, is a copy of the monthly report what we are preparing for ourselves. The bookkeeping system furnished to us free by the Brown Shoe Company is the finest for the benefit of a retailer.

May I suggest here that I was in manufacturing and I also controlled some retail stores myself before I came to this country, and if we had this system what we are using now we would have been much better off and we could have progressed much better than we did. But the bookkeeping system automatically forces us to keep our records and keep them for our own benefits, and while we are doing it we are also making a duplicate and sending it to the

Brown Shoe Company, which is a statement, you know, enabling the Brown Shoe Company to give us credit.

Q. I understand the benefit to you from these benefits and services, but what I'm asking is what do you feel that you owe Brown Shoe Company because you are getting these very beneficial services?

A. Nothing, beyond paying my bills on time.

Q. Do you feel that you would get these benefits and services if you had 40 percent of your inventory in Brown shoes?

A. I think so.

Q. How low would it go, when would they stop giving you the—

A. I never tried to pin this down. I was never asked, you know, how much we have to get it. I never tried this, I can't answer you.

Q. Does the Brown fieldman ever urge you to get rid of lines that conflict with Brown?

A. No.

Q. Are you aware that he has instructions to that effect?

A. No.

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The Witness: I was never told anything of that sort. I mean, it is the opposite of that. When I opened the store in 1950 I was almost surprised to hear from the fieldman that in Los Angeles you cannot open a shoe store [fol. 577] without the product of the Vogue Shoe Company, and he took me himself and introduced me to the salesman of the Vogue Shoe Company. So I was with the fieldman all the time, because I asked his help. I did not have the experience in retailing in Los Angeles. I started completely new. I had experience in the shoe business but this took me completely back, I couldn't understand it, you know, how a man from the Brown Shoe Company, he should want me to buy all Brown Shoes, all of a sudden he takes me to a company which is outside Brown.

By Mr. Timony:

Q. Do you think he helped you quite a bit?

A. I think he did. At that time those shoes were necessary. Now they aren't.

Q. Is it possible that you couldn't have even started your retail store without the aid of the Brown fieldman and the other benefits and services that he offered on the Brown program?

A. I definitely state so. The reason I went to the Brown fieldman is because I felt he would give me the necessary aid to start out, because I didn't have retail experience in Los Angeles and in the United States at all. You probably have derived from my speaking, my accent, that I am not born in the States, I was not born here.

Q. I can state for the record that you have assumed our language and our methods of making a living very well.

A. Thank you.

Redirect examination.

The witness came to this country in 1940. He had been in the shoe business ever since 1922, before coming to this country. He had been in retailing only from the supervisory point. He never retailed, himself. There were 45 retail stores involved in the operation of which he was the supervisor. They were opened right after the depression, which also hit in Rumania, and in order to place the product of the factory they were almost forced to go into the retail business. And after they did, the managing of the retail [fol. 578] stores was taken from the previous personnel of the factory and he was in charge. It was his responsibility. With that background he came to this country, and in 1950 went into the retail business in Los Angeles and became a Brown franchise store. During the period from 1940 until 1950 he worked in a shoe manufacturing plant in Los Angeles for three years. His wife has her own specialty and he joined her in the custom-made sportswear business. She was in the sportswear business so he started managing her store. Until 1950 he and his wife did not have the financial means to open a shoe store, and that is the reason he had to be satisfied with doing something else until they made sufficient capital to start out in the shoe business.

July 18, 1961

JOHN P. MORTON, called as a witness for the Respondent, testified as follows:

Direct examination.

Mr. Morton resides in Eureka, California. He is a shoe merchant and owns 2 shoe stores. Their names are both the same, Hornbrook's Shoes. There is one in Eureka and one in Arcata. The approximate population of Eureka is 29,000. The population of the trade area that his store caters to is about 40,000 to 45,000. There are approximately 15 to 20 other shoe outlets in Eureka. The approximate population of Arcata is 4,000 to 4,500. The population of its trade area is approximately 15,000.

The witness has 16 years experience in shoe retailing. He came into a partnership in 1946, and from that time on he learned and managed the Eureka shoe store, plus overseeing the management of the Arcata shoe store since 1951. The store at Eureka opened in 1921. It is a Brown franchise store and became one in 1921. The store in Arcata opened in 1951. It is a Brown franchise store and became one in 1951. The Eureka store acquired another store and then moved within three months so you could [fol. 579] say it was opened as a new store back in 1921. Arcata was opened as a new store.

The Brown brands he carries in both stores are Air Step, Life Stride, Roblee, Buster Brown, Glamour Deb, Smartaire, and Varsity Vogue and Pedwin. Brands of shoes from other companies are Edith Henry, Perkies from Grinnell Shoe Company, work shoes from Santa Rosa Shoe Company, Wienbrenner Shoe Company, International Shoe Company, General Shoe Company, Vogue Shoe Company. There are various others too, Hush Puppies from Wolverine Shoe Company, Skooters from Vogue Shoe Company. In canvas shoes he goes into Mishawaka Rubber Company. The brand names are Red Ball Jets, Weatherproofs, Cords. There are several brand names in that company. There is the United States Rubber Company which includes Keds and Cadets, and Hood Rubber Company which includes Sun Steps. His main source of Canvas

and rubber footwear is Mishawaka for both stores. United States Rubber Company shoes and Hood Rubber shoes are sold in both stores. The brand of International shoe he carries is Grace Walker. The General Shoe Company shoe is an unbranded shoe from their Central Stock Division. Its price range is a low price range from \$3.98 to \$4.98.

The fieldman from Brown Shoe Company is Arthur Wensel. He has called on the witness approximately 6 months. Before that, the fieldman was Lou Robbe. These gentlemen come by his store between 2 and 4 times a year.

The witness makes out monthly reports. He uses the record system made available by the Brown franchise program. He buys group life insurance through the Brown franchise program. He has never made a comparison of that insurance with similar insurance purchased locally. He obtains his business insurance and fire insurance through Brown in connection with the franchise program. He has never had occasion to compare the cost of that to similar insurance purchased locally. He received architectural services from Brown in 1951, 1957, and 1961. There may have been another time which he doesn't recall. In [fols. 580-581] 1951 it was the remodeling of his Eureka store. In 1957 it was moving the Eureka store to a new location, and in 1961, it was the remodeling and expansion of the Arcata store. The witness did not attempt to get architectural services for this work locally. They had outside architectural work on other jobs. He is deriving a goodly benefit from these services. He uses the window trim service available through the franchise program and pays for this service. It varies according to the trim of the particular season. He would judge \$500 to \$600 a year.

In connection with canvas and rubber footwear suppliers, the witness obtains similar shoes from these sources so he can make a comparison of the purchase price in terms available from them. There is no difference in the costs from these three sources for like quantities as far as discounts are concerned, but occasionally he finds a better shoe in one line than in the other line at the same price or possibly the style would be better in one line than in another line. He has no reason to believe that, as a franchise store he receives any better terms or special discounts from the U. S. Rubber Company that would not be available